INSURANCE PRINCIPLES, PRACTICE AND LEGISLATION

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PREFACE

The literature on insurance is very scanty in our country. This is the result of an extreme academic neglect of this subject. But with the rapid growth of insurance business and the intricacy and complexity of problems confronting our insurance men, the importance of this science as a fit subject of study is being realised slowly but steadily. Our Universities and educational institutions have now begun to turn their attention to this subject; and there is today a great need of lucid, logical and scientific insurance literature of diverse types and description, which might create in the heart of the reader real and lasting taste for the subject. The present work is an attempt in this direction. It is hoped that it would be found useful not only by students but also by insurance officers and agents and general public.

Our thanks are due to the Oriental Government Securities Life Assurance Co., Ltd., the Empire of India Life Assurance Co., Ltd., and the Indian Life Insurance Co., Ltd., for their kind co-operation and also to their local representatives for their prompt help. We are also obliged to the Legislative Department of the Government of India for according us the permission to reproduce from the Indian Insurance Act.

Suggestions for improvement are earnestly invited and shall be accepted with gratitude.

M. K. G.
A. N. A.

ALLAHABAD UNIVERSITY
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PREFACE TO THE SECOND EDITION

We are glad to send the book to the press for its second edition. We have taken the opportunity of revising and improving the book generally and fresh matter has been incorporated at several places. A new Part, Part V, has also been added which deals with automobile insurance, credit insurance and other types of miscellaneous insurance. We believe the book would be found more satisfactory in the shape of its second edition.

M. K. G.
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PART I
GENERAL PRINCIPLES

CHAPTER I

INSURANCE: ITS MEANING, ORIGIN AND KINDS

From the very beginning of human habitation on the globe, human life and property have been subject to risks and dangers of various types and degrees. Human civilisation has consisted in reducing, or safeguarding against, these risks and dangers in some effective manner. Certain risks or losses are meagre and do not trouble our minds to any serious extent. If one loses the pencil with which one writes or drops a cheap book somewhere unnoticed, one would not generally mind such a trifling loss. But there are other losses which cause great financial handicap, and in some cases turn a man almost into a pauper. If a house in which a man resides catches fire and is reduced to ashes, he will not always find it easy to erect a new house in its place without placing upon himself considerable financial strain. Again, if a ship loaded with valuable merchandise goes to the bottom of the sea, the owner of the cargo will certainly suffer a serious financial loss. Again, if the only bread-winner of a family is removed by untimely death, his dependents might find themselves in very narrow circumstances and might almost become destitutes. These are some instances of considerable losses which have subjected human beings to incalculable miseries and sufferings. Human ingenuity has always struggled to provide a safeguard against these unfortunate happenings. Insurance is such a device.

The nature of insurance can best be explained with the help of a simple illustration. Let us suppose that there are 1,000 houses in a particular locality. Past experience shows that every year two houses are reduced to ashes. It is, therefore, definite that in coming years also two houses would be destroyed per annum; but it is not known as to who would be the unfortunate victims of this calamity. As a matter of fact, each house-owner fears that he might be the likely victim. Each man, as such, carries with himself the probability of a large loss. To overcome this nerve-raking anxiety, these 1,000 house-owners may form a group and agree that the total loss which is inflicted on any number will be distributed equitably over all of them. Assuming that the value of each house is Rs. 10,000, the total yearly fire loss would be Rs. 20,000. This might be divided equally among the house-owners so that each man would have to pay Rs. 20 per annum. The victims will certainly suffer a loss of Rs. 10,000 each, but they would get back this amount from their fellow members at the rate of Rs. 20 each. Each member thus exposes himself, after becoming a member of the insurance group, to a definite loss of Rs. 20 instead of an uncertain loss of Rs. 10,000. He thus substitutes for the probability of a loss of Rs. 10,000 the certainty of a minor loss of Rs. 20 only. This is the achievement of insurance.*

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* See in this connexion S. G. Leigh, *Guide to Life Assurance*, pp. 1—3.

It should be easy to define insurance now. *Insurance is a co-operative form of distributing a certain risk over a group of persons who are exposed to it.* According to Professor de Morgan, insurance is the agreement of a community to consider the goods of its individual members as common. It is an agreement that those whose fortune it shall be to have more than average success shall refer the over-plus in favour of those who have less.

Old and New Forms.

Originally insurance organisations were voluntary and co-operative in character. Those who wanted to obtain protection against any risk, joined hands voluntarily and arranged the proportions of the contributions of each on some fair plan. Whenever any loss took place, the total sum was divided amongst the members in the said proportions. The contributions of each member had to be assessed as many times as the occurrence of the loss. This was known as the assessment plan.

Assessment system had many defects. The amount of premium and the time of its payment were uncertain and they went on increasing with the passage of time. The healthier members would usually withdraw to join some newer group with low premiums and the old groups would thus be left with heavier claims which would lead to their disruption. Because of such shortcomings, assessmentism has become a thing of the past, for all practical purposes. Its present

position has thus been described by Mr. Miles M. Dawson: "For the most part, the business assessment societies have passed out of existence. In any event, they occupy relatively a much less important place than hitherto. The proportion of the total life insurance in the country, held in the business assessment associations, has steadily decreased, and for many years, the amount in force has diminished. A considerable number of smaller societies are still held together by special influences, and in a few cases great economy and skill in management, resulting in low expenses and low mortality, has enabled the companies to thrive even to this day, nothwithstanding the defects of their plans. Many of those which have gone out of business have failed, but a respectable number were reorganized as regular companies dealing with their assessment business in various ways."*

It would, therefore, be correct to say that this old form has now vanished entirely from the civilised world. Insurance has now been converted into a lucrative business by shrewd persons who saw money in it. Insurance companies have now been formed which sell insurance protection for a definite amount against a definite risk in exchange for a certain sum declared in advance which is known as premium.* If the subject-matter insured is damaged or destroyed by the happening of the contemplated event, the insurer gets the

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* *Annals of the American Academy of Political and Social Science,* Volume XXVI.

* Also consult Chapter 5, *poste.*

promised amount from the insurance company. Insurance in this new form may be defined as *a contract whereby one party agrees to indemnify the other party against a loss which may arise, or to pay a certain sum of money on the happening of a certain event, in return of a compensation called premium.* In the words of Chief Justice Tindal, insurance is a contract in which a sum of money is paid by the assured in consideration of the insurer's incurring the risk of paying a larger sum upon a given contingency.

The person who protects another against risk is known as *insurer*: while the person who is protected against the risk is known as the *insured*. The document wherein the terms and conditions of the contract are stated is known as the *insurance policy*. The amount for which a policy is taken out is called the *insured amount*. The consideration which the insured has to pay to the insurer is known as the *premium*.

Assurance and Insurance.

While reading books and literature on insurance, the reader is likely to come across two words which he may find very perplexing. These are *insurance* and *assurance*. Writers on this subject have tried to distinguish between these two terms and they have given definite meanings to them which are not identical.

According to some writers, the term *assurance* should be applied to those contracts in the case of which the insured amount becomes payable on the happening of an event which is bound to take place. The word

insurance, on the other hand, should be used in connection with those contracts in the case of which the insured amount becomes payable on the happening of an event which may or may not take place. Life contracts, according to this point of view, deserve the term *assurance,* for a man must die or attain a certain age. Similarly, the term *insurance* is applicable to fire and marine contracts, for in these cases the insured amount becomes payable on the happening of an event, fire or loss on sea, which is not certain in its occurence.

Some other writers say that a person *insures* himself or his property; while the insurance company *assures* him that in case the contemplated event takes place, it will pay the agreed amount upon the agreed basis.

Still another authority has expressed the opinion that *assurance* represents the principle whereas *insurance* represents the practice.

Though the distinctions drawn between these two terms are quite sharp, the basis of this sort of hair-splitting does not appear to be either profitable or fruitful in theory or practice. There is no satisfactory reason why such a distinction should be drawn between these two terms. As a matter of fact, it would be more advisable to forget these distinctions which have been so variously drawn. It would, therefore, be best to treat *insurance* and *assurance* as synonymous.*

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* A. N. Agarwala, *Business Methods and Machinery,* Vol. II, pp. 201-202.

Origin of Insurance.

Insurance is an ancient device, though its modern form has been perfected only in recent times. The first type of insurance to appear on the scene was marine insurance. In the days of yore, men were engaged in sea-borne trade which touched shores of a large number of countries far and near. But sea voyage in those days was extremely risky as men had only little control over nature then. Wireless, steam, light-houses, police, compass and other scientific inventions have now made sea voyages comparatively safe, but when they were not available, the danger was immense. It often used to happen that a ship leaving a certain country was not heard of for a very long time and its owner all the time feared the loss of all the valuable cargoes that were in it. Maritime traders, therefore, agreed upon a voluntary scheme according to which the traders whose ships reached destination safely agreed to indemnify those unfortunate traders whose ships failed to do so. In this way each trader was freed from a considerable anxiety of a great loss in exchange for a small payment and he had the comfortable security that, whatever happened, his financial position cannot be seriously jeopardised. but in danger

In the beginning, its operation was entirely voluntary but later on it passed into the hands of specialists. Modern insurers have made it their business to obtain knowledge of various sea routes and to quote the rates of premiums on which they are willing to issue marine policies. What the merchants have now to do is simply

to purchase a marine insurance policy; and if the loss occurs, to present their claim to the insurer.

Marine insurance was followed in due course of time by life insurance and at a much later date by other numerous types of insurance schemes which the complexity of modern business and social life have made inevitable.*

Kinds of Insurance.

The chief varieties of insurance are life, fire and marine. In recent times several other types of insurance schemes have come into existence and other novel types make their appearance every now and then.

Life Insurance.—Life insurance is the most important section of insurance enterprise. In our country, most of insurance companies transact only life business. In England where this is not quite so and other forms of insurance are also popular, no less than 80 per cent of insurance business is concerned with life. A man insures his life either to make a provision for old age when his earning capacity deteriorates, or for leaving a certain sum for his dependents when he dies, which may happen before he is able to save and accumulate sufficient amount. Life insurance has several business and financial advantages as well. In life insurance policies it is provided that the insured amount is to become payable on the happening of death or in some cases on the attainment of a certain age, which-

*See F. W. Raffety, *Modern Business Practice*, Vol. V, Ch. XIX.

ever is earlier. Only the man having an insurable interest in the proposed life can obtain a policy on it.

Fire Insurance.—Another important type of insurance is fire insurance. Fire is responsible for causing considerable losses which are revealed by relevant statistics of the various countries of the world. But a layman has hardly any idea of the loss annually caused by fire. Fire insurance policies may be taken on residential houses or on factories and business premises. The former, however, are not very much liable to catch fire and consequently they are not generally found insured against fire. But factories because of proximity of fire or its causes and business premises because of the great loss that would result if a fire takes place, are more usually insured.

Marine Insurance.—Marine insurance is another important category. Ships sailing on sea are exposed to very many risks. They might collide against one another, spring a leak, catch fire; they might be captured by king's enemies or may be seized by pirates. The ship and the cargo may be lost in such a case and a tremendous loss may be caused to their owners. Such risks, if not covered, will greatly discourage the international trade which is mostly sea-borne. This is the reason why marine insurance is considered to be the handmaid of modern world trade and is its indispensable auxiliary.

Social Insurance.—Besides these three types of insurance, there are some other new types which have recently come on the scene and which have been con-

veninently grouped under 'Social Insurance'. One of such types is the *unemployment insurance* which insures a regular income to the insured during the period of his unemployment. The ex-King of Siam had taken some unemployment policies prior to his abdication, which entitled him later to the enjoyment of 40,000 dollars a year from insurance companies. *Workmen's Compensation Insurance* is another instance. In the Workmen's Compensation Act, the employer is liable to compensate the worker against any injury suffered by a man while on duty in his factory. This liability is quite considerable in these days of enormous mechanisation. The employer, therefore, purchases a workmen's compensation insurance policy whereby the insurance company undertakes to settle and meet all the claims arising on this score. Other branches of social insurance are *maternity insurance* which gives compensation to women workers immediately before and after child birth; *sickness insurance* which means to give cash and medical benefits during sickness; and *pension insurance* which aims at giving pension to the invalid, to the retired old persons, and to the survivors when the only bread-winner of a family dies. Social insurance has the peculiarity that while the industrial workers are generally the insured and obtain all its benefits, the premiums are paid not only by them but also by the State as well as the employers jointly.*

* For fuller details see A. N. Agarwala, *Social Insurance Planning in India* (East End Publishers, Allahabad, 1944).

Other Types of Insurance.—Then there is a whole host of diverse types of insurance schemes whose number seems to be ever-increasing. There are the well-known schemes of motor insurance, crop insurance, bad debts insurance, hail-storm insurance, profits insurance, aviation insurance, etc., their respective functions being quite clear from their names. Various amusing types of insurance are also to be seen. For instance, songstresses sometimes get their throats or voices insured so that when their singing efficiency declines, the insurance company pays them a certain sum. Dancing girls, similarly, get their legs insured so that when they cannot dance as well as usual and their earning capacity goes down, they may get a certain sum from the insurance company. As a matter of fact, there is hardly any risk to which the modern man or woman is exposed, against which an insurance policy cannot be obtained.

CHAPTER 2

THE CONTRACT OF INSURANCE

Essentials of Insurance Contract.

Insurance contracts constitute a special variety of ordinary business contracts and are, as such, governed by the Indian Contract Act. The Indian Contract Act lays down the essentials of an ordinary contract as follows: "All agreements are contracts if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object, and which are not hereby expressly declared to be void."*

An insurance contract in order to be valid must possess these characteristics but in addition must have two other essentials in order to be enforceable at law.

Insurable Interest.—In order that the insurance contract may be valid, the insured must have insurable interest in the subject-matter of insurance, *i.e.,* he must be in such a position as to benefit financially by the safety of the subject-matter and be prejudiced financially by its loss or damage. Insurable interest may here be defined as a financial or pecuniary interest in the subject-matter of insurance whereby the insured benefits financially by its safety and suffers financially by its loss or damage. Essentially insurable interest is a pecuniary interest. An insurance contract without insurable interest is not legally valid and cannot be enforced in a court of law. Without such an interest, an insurance

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* *Indian Contract Act,* Section 10.

contract becomes void and is no better than a wagering contract.

In the case of life insurance, the insurable interest must exist at the time when the policy is issued. In the case of marine insurance, the case is just the reverse. The insurable interest in such a case must exist when the loss or damage takes place: it is not at all necessary that it should be present while taking the policy; for the subject-matter of insurance may change hands many a time during the period of insurance and, with the transfer of property, the insurable interest also changes hands. In the case of fire insurance, on the other hand, the insurable interest must be present both when the policy is taken out and when the loss or damage takes place. Temptation to incendiarism in fire insurance is very great. Insurance companies, therefore, seek to limit their liability by insisting that insurable interest must exist when the policy is issued, that the policy must not be assigned to any third party without the written consent of the insurance company and that insurable interest must also exist when the claim under the policy arises, on the happening of the event insured against.

Disclosure of Material Facts.—Each party to the insurance contract must make a full disclosure of all material facts regarding the subject-matter of insurance. A material fact is one which is likely to effect the judgment of the other party. It is for this reason that an insurance contract is known as a contract of absolute good faith or a contract *uberrimae' fidei.* In the case of

ordinary contract, misrepresentation makes the contract voidable at the option of the other party. In insurance contract, there must be not only no misrepresentation, but also full disclosure of all the material facts. It should be emphasised that the liability of full disclosure rests not only on the insured but also on the insurer.

As observed by Lord Mansfield in an important case, "Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact and his believing the contrary." The principle has now firmly been established that misrepresentation or concealment of any material fact, whether accidental or intentional, renders the policy void.

Kinds of Insurance Contracts.

Ordinarily insurance contracts are of two kinds: *Contracts of Indemnity* and *Life Contracts.*

Contracts of Indemnity.—Excepting those contracts where the subject-matter of insurance is human life or, in other words, the risk insured against is death and also contracts of personal accident insurances, all other insurance contracts come under the term of contracts of indemnity. Of such contracts, fire and marine insurance are the most important. Under such insurance contracts, the insurer undertakes, according to the terms of the agreement, to *indemnify* the insured against the actual loss suffered by the latter in respect of the property insured through the risk or event insured against. It is only the actual loss that is pay-

able by the insurer and it must arise from an already contemplated contingency. Suppose a house is insured for Rs. 10,000 against fire. If a fire reduced the building to ashes and at the time of destruction its value is estimated at Rs. 8,000 *only,* the insured will get only Rs. 8,000 and not Rs. 10,000, though the insured amount is Rs. 10,000. It is so because the underlying principle of contract of indemnity is to make good the actual loss incurred by the insured and not to offer an opportunity of reaping a benefit out of it.

Life Contracts.—A life insurance contract does not come under the category of contracts of indemnity. For here the actual loss arising from the loss of human life is difficult of ascertainment and, therefore, it is impossible to make good the 'actual loss,' inflicted by the death of a certain person. It is for this reason that no limit is placed on the amount for which a life insurance policy may be taken. Under such a policy, the whole insured amount becomes payable in the case of death or on the attainment of a certain age, as the case may be. Evidently a life insurance contract is an absolute undertaking to pay a certain sum of money on the happening of death or the attainment of a certain age, as the case may be: it is not a contract to indemnify a person against a *loss* borne by him due to the occurrence of a contemplated event.

Difference Between Life, Fire and Marine Insurances.

Differences between life, fire and marine insurances can be easily pointed out. In life insurance the event

on the happening of which an insured amount becomes payable is bound to take place. Such an event is death or the attainment of a particular age, either of which must happen. But in the case of fire or marine insurance, the contemplated event may or may not take place, or may take place partly or wholly. A ship insured under a marine policy may or may not sink, and a house insured under a fire policy may or may not catch fire. It follows, therefore, that in the case of life insurance, every policy is bound to become a claim while in the case of other types of insurance this is not necessarily so.

Fire and marine insurance contracts, moreover, are contracts of indemnity. According to them the insurer undertakes to indemnify the insured against a loss or damage of the subject-matter of insurance due to the insured cause or peril. In life insurance the question of loss or damage and, therefore, of its indemnification does not arise. The loss inflicted by death cannot be estimated and consequently cannot be compensated. A life insurance contract is a definite undertaking to pay a definite sum of money on death or on attainment of a certain age and that undertaking has to be strictly fulfilled.

Apart from it, the classification of risks in life insurance is rather simple. Lives are either insurable or uninsurable. Of the insurable lives, there are standard lives and sub-standard lives among different age-groups. The classification, as it appears, is quite simple. But it is not quite so in the case of fire and marine insurance where it is rather

complex. Each property differs materially from the other from the point of view of risk. Special scheduled tables have to be prepared for each property and the degree of risk in each case is carefully considered on its own merit.

Again, a fire insurance policy is generally taken for one year and marine insurance for a still shorter period. But life insurance is usually taken for a considerably long period.

Finally, in fire and marine insurances, there is the element of protection only; but in the case of life insurance, there is not only the element of protection but also that of investment.

Kinds of Insurance Organisations.

The business of insurance is carried on by a number of insurance organisations which may be briefly discussed here.

1. *Insurance Companies.*—These are the companies incorporated under the Companies Act to carry on the business of insurance. They have their capital subscribed by the shareholders, who are the owners of the company and are entitled to the profits of the business. The management of the company is entrusted to a Board of Directors, elected by the shareholders from among themselves. Policyholders purchase what the company sells, namely, the insurance protection; hence they form quite a distinct group from the shareholders —the latter being the owners of the business and the former being the customers only. Policyholders buy

insurance on the terms as may finally be agreed upon and the matter of profit and loss is the concern of the shareholders alone.

But the situation has considerably changed on account of the prevailing keen competition. Policy-holders are now invited by the company to represent themselves on the Board of Directors and also to share in the profits of the business, so much so that in most cases as high as 90 per cent of the business profits are offered to them and the shareholders remain contented with the remaining 10 per cent. In the field of insurance, such companies are most numerous and important.

2. *Mutual Associations.*—At times an association is formed by a certain number of persons with a view to insure their own lives. As the insurance is done on their own lives, such a group is known as *Mutual Association.* A member of such a group is an insurer as well as an insured. He is, as such, entitled to a share in the management and also in the profits resulting from the business of insurance. As the insured themselves are to manage the whole affair, it is likely to be conducted with greatest possible efficiency and skill. Again, the entire profits, to which only those who are insured with association are entitled, go to lower the ultimate cost of insurance to each of the members.

3. *Lloyds Associations.*—These are the associations of individual insurers who are known as *underwriters.* The special characteristic of a policy issued by such an association is that each policy is "written" for a certain aggregate sum by different underwriters,

each writing or holding himself responsible for only a part of the insured amount. If a marine insurance policy is taken for Rs. 50,000 and ten underwriters underwrite the policy for Rs. 5,000 each, in the event of a loss, each underwriter will pay Rs. 5,000 to make up the amount of the policy. Each underwriter has to deposit a large amount as security with the Association of which he is a member so that in case he fails to meet his liabilities on the policies underwritten by him, the association may pay it from that amount. Besides, before admitting a person to the membership of the association, it very carefully ascertains that he is a man of good financial standing and integrity. The Association has its own strict rules and regulations which each member has to observe and follow. Lloyds Associations are chiefly noted for marine insurance and most of this class of insurance passes through their hand, though they provide other forms of insurance also. The Lloyds Association was originally founded in England.

4. *Self-Insurance.*—Instead of purchasing a policy a person may himself put aside a sum periodically in a fund so that if and when the contemplated event takes place, the loss may be made good out of this fund. Self-insurance may be found quite feasible in the case of a large shipping company owning a large number of ships which has to pay a large sum of money as premiums in order to obtain insurance on its ships. Here a very large amount of property is at risk which is quite widespread; the theory of probability may, as such, be expected to work itself quite well; and self-insurance

may be depended upon as a reliable device against the risk of loss or damage. It is only in such cases that self-insurance is found cheaper than insurance with an outside agency.

5. *State Insurance.*—When State itself sells insurance, it is known as State Insurance. There are certain countries where State has taken upon itself the task of providing insurance to the public. It must not, however, be supposed that in such countries the entire machinery of insurance and every type of insurance has passed into the hands of the State; this would evidently be too much interference with private enterprise and will not be long tolerated in a capitalistic economy. The State generally chooses to conduct only a few types of insurance most of which are of the nature of social insurance; and leaves the others to the private enterprise. In India, it is only Post Office Insurance Scheme which is run by the Government under which the lives of Government employees are insured at rates of premium which are found to be lower than the rates of ordinary insurance companies. Recently there has been considerable agitation for the abolition of this scheme which encroaches upon the field belonging to insurance companies.

Doctrine of Subrogation.

The doctrine of subrogation is applicable to fire and marine insurance contracts only which are called contracts of indemnity. This principle lays down that after the insurer indemnifies the insured against a loss

or damage, he becomes subrogated to all the rights and remedies which the insured has against a third party in respect of loss or damage so paid for. There must, however, be present certain essential features for a valid application of this principle. Firstly, the insurer must indemnify before he can take advantage of this principle. Secondly, the insurer becomes subrogated to only those rights which the insured has against the third party and he must sue in the name of the insured.

Double Insurance.

Double insurance, as its name implies, refers to the effecting of more than one insurance on the same subject-matter.

In the case of life insurance more than one policy can be purchased and the whole insured amount in respect of each policy can be realised. This is not so in the case of contracts of indemnity. Here the insured is precluded from or forbidden by the principle of indemnity from claiming anything more than the actual loss. It follows from above that if one insures one's property for more than its value, one will have to pay a higher premium with no corresponding advantage. But if more than one policy have been acquired and the total insured amount does not exceed the value of the subject-matter, the insured is entitled to claim only the actual loss or damage from the insurance companies in any order he likes subject to the maximum amount insured in each case. But the insurance companies will bear the loss proportionately among themselves.

Re-Insurance.

Double insurance should be distinguished from re-insurance. When an insurance company finds that the risk accepted by it is greater than what is prudent for it to assume, it insures a part of the risk with another insurance company. This practice is known as re-insurance. Re-insurance is governed by the same provisions as the original insurance contract. The position of the insured remains quite unaffected by re-insurance. The insured has entered into a definite contract with the original insurance company; and he is not in any respect affected by the second insurer. The re-insurance contract is entered into between two insurance companies who alone are bound by it. The practice of re-insurance is common to all the branches of insurance but it is most popular in the case of fire insurance.* There are certain fire companies which do not undertake any business other than re-insurance.†

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* For a detailed discussion with special reference to India, see A. N. Agarwala, Reinsurance in India in the EASTERN ECONOMIST (New Delhi), June 16, 1944.

† See *The Insurance Directory and Year Book* (*Post Magazine Almanack*), (London).

PART II
LIFE INSURANCE

CHAPTER 3

INTRODUCTORY

Of all the varieties of insurance, life insurance is the most popular, widespread and important. British statistics reveal that about 80% of the total assets of all the insurance companies in Great Britain belong to life office.* This is so in every country of the world. In our country, too, life insurance companies have made tremendous strides during the last decade or so and it would not be far from truth to say that almost all the recent growth in insurance industry has been monopolised by them.

Life insurance contract takes place between the insurer and the insured. The insurer promises to pay a certain sum of money to the insured on his attaining a certain age or to the representatives of the insured on his death, as the case might be. The insured, on his part, undertakes to pay certain cash compensation to the insurance company, which is called "premium" and which may be paid either in one lump sum, or periodically—annually, semi-annually, quarterly or monthly. Life insurance may, as such, be defined as a contract whereby one party undertakes to pay to another a certain sum of money on the latter's death or on his attaining a certain age, in exchange for a cash compensation known as premium which may be paid in a lump sum or periodically. Life insurance is just like any other

* See A. N. Agarwala, *Insurance Finance*, p. 11.

insurance contract, its only special features being that the subject-matter of insurance in this case is life and since death or the attainment of a certain age comes only after a long time, the contract lasts for a long duration.

Importance of Life Insurance.

Life insurance satisfies vital needs of the individual and the society. It is often seen that a youngman lives quite happily and spends money freely on the objects of his pleasure in his youth when his earning capacity is considerable, without saving much for his old age. When he becomes old, he finds that his income has either stopped or fallen considerably, but he really requires a larger amount to stick to his old standard of living. To such a man, life insurance provides adequate and suitable protection. An endowment policy maturing at 55 or 60 years of age, would save a man from any such difficulty he might have to face in the old age.

It is not old age alone which makes a person a victim of financial stringency. When death lays her icy hands on an earning member of the family, it finds itself in narrow circumstances; and if the deceased be the only bread-winner of the family, utter destitution is surely in store for it. A life insurance policy is a great protection against such an eventuality.

Life insurance policy also plays an important part in financial sphere. In a partnership firm, it is often advisable to take a joint policy on the lives of the part-

ners, the insured amount becoming payable on the happening of the first death. This enables the survivor to pay off the successors of the deceased partner without causing any financial embarrassment to the firm itself. Again, when a creditor sees that his only chance of getting back his loan is during the life time of the debtor, he often purchases a life insurance policy on his debtor's life; so that in case the debtor dies without repayment, the insurance company will pay the money to him.

Life insurance is also used for a large variety of other purposes. It is of incalculable assistance to those who have small children, who want to provide funds for the education of their children or who have old parents or dependents. Its importance is specially acute for the people of India at the present moment because the joint family system which hitherto ensured economic security to a person in old age or to his dependents after his death is fast disappearing and life insurance is the only proper substitute for it. The perusal of a subsequent chapter, discussing the various types of life insurance policies and the functions performed by each of them, will show to the reader the other advantages of life insurance.

Essentials of Life Insurance Contract..

Besides the ordinary essentials that must be present in a contract, according to the Indian Contract Act, in order to make it valid, a life insurance contract should possess two other essentials: (1) disclosure of

all the material facts, and (2) the existence of insurable interest.

Disclosure of Material Facts.—Since the contract of insurance is a contract of absolute good faith, it re-requires each party to the contract to make full disclosure of all the material facts such as are likely to affect the judgment of the other party. The contract of insurance will become invalid if either party fails to make a clean breast of the material facts to the other party. This responsibility rests, it should be clearly remembered, on the insured as well as on the insurer. It is, of course, true that since it is the life of the insured which is the subject-matter of insurance, he is naturally expected to be in possession of full facts about it and the responsibility of full disclosure is his in a very special sense; but the insurer should not be presumed to be quite free from this liability and responsibility.

The insurance company expects the insured to fill in a Proposal Form which is supplied free by the insurer.* In this form the proposer is required to supply information of definite characters pertaining to the life proposed for insurance. All these statements are material facts and they must be quite correctly stated. Any mis-statement would entitle the insurer to avoid the contract.

This is the general legal doctrine governing life insurance contracts all the world over. Interesting

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* A Specimen Proposal Form is given after a few pages (pp. 33-36) which the reader is advised to study carefully.

situation has, however, been created by the Indian Insurance Act, 1938, whereby it has been provided that no policy can be called in question after two years from the date of its issue. This section appears to qualify the general doctrine of full disclosure in a material way.

Insurable Interest.—The second essential of life insurance contract is that the insurer must have an insurable interest in the subject-matter of insurance. Every person is deemed to have insurable interest in his or her own life. Insurable interest in the lives of others can be acquired as a result of pecuniary relationship or of blood relationship or marriage. The following are the specific instances of insurable interest:—

1. Every person has insurable interest in his or her own life.
2. A husband has insurable interest in the life of his wife; and a wife has an insurable interest in the life of her husband.
3. A father has insurable interest in the life of his son only if he is dependent on him.
4. A son has insurable interest in the life of his father only if he is dependent on his father.
5. A creditor has insurable interest in the life of his debtor to the extent of his debt.
6. A trustee has insurable interest in respect of the interest of which he is a trustee.

A life insurance contract without insurable interest is a purely gambling contract which is void at law. In

life insurance, insurable interest must exist when the policy is taken though it may not be present when the policy becomes a claim.

Protection and Investment Elements.

The reason why life insurance is so much popular is to be found in the fact that it involves not only the element of protection but also the element of investment.

If a man opens a bank account and keeps a certain sum of money in it at a certain rate of interest, he will get back his money together with the interest accrued thereon when he withdraws his money. A bank account represents only an investment. On the other hand, a fire insurance policy provides only protection. If the subject-matter of fire insurance is destroyed or damaged as a result of fire, the insurance company would make good the loss. This is the element of protection. But if fire does not take place and loss is not sustained, nothing would be paid by the insurance company. A fire insurance policy, thus, provides only protection and not investment. It is the peculiarity of life insurance that it provides not only protection but also investment.

The premiums that the insured pays go on accumulating in a fund which keeps on increasing by annual premium payments and the interest earned by the investment of the fund. If the fund goes on increasing without any interruption or drain, it becomes, in course of time, equal to the insured amount. When the policy becomes a claim, this is paid back to the insured. From this point of view, life insurance may be regarded as an

investment, the insurance company being the investor of premiums that are paid by the insured.* But in case the insured dies before paying all the premiums, the insurance company will pay the promised amount to the representatives of the deceased. This is the element of protection. Acturially, protection is measured by the insured amount less the premiums paid up-to-date together with interest accrued up-to-date.

A life policy is thus a combination of protection and investment. With the passage of time, the investment element goes on increasing while the element of protection goes on correspondingly decreasing. As year after year the fund increases, the difference between the insured amount and this fund becomes narrower. In other words, just as the element of investment increases, the element of protection decreases. If an endowment policy actually matures, what the insured will receive will be the total premiums paid by him together with a certain amount of interest thereon and the element of protection would disappear at this stage. In the same way, the element of investment is almost non-existent in the beginning of a life insurance policy.

Effecting Life Insurance.

We may discuss briefly the procedure of effecting life insurance at this place.

1. *Proposal.*—The person who wants to purchase a life insurance policy has first to obtain a proposal

* For a full and detailed discussion of insurance funds and their investment, see A. N. Agarwala, *Insurance Finance.*

form which is available free of charge from the office of the insurance company or from its agents or representatives. It requires the proposer to disclose such information as may throw light on the degree of the risk involved. It makes enquiries regarding the age of the proposer, his occupation, diseases of which he has been a victim, the ages of his father, mother, brothers and sisters, their state of health if alive and causes of death if deceased and so on. It has already been observed that since life insurance contract would become vitiated by non-disclosure or mis-representation, the insured must be careful in making only correct statements. The form also requires the mention of the names and addresses of two frinds, not related to the proposer or the agent through whom the proposal comes, from whom the insurance company may make further enquiries, if found necessary.

PROPOSAL

Br. Ppl. No...............
H. O Ppl. No...........
Policy No..................

Agency...................................

X Y Z INSURANCE LIMITED

Head Office:—XYZ Insurance Building, DEHRA DUN.

Full and distinct written Replies must be given to each of the following Questions:—

---

1. Name (*in short*) of the Life to be Assured

---

2. (*a*) Sum to be Assured...
   (*b*) Age next Birthday...

---

3. (*a*) Premium how Payable...
   (*b*) Plan of Policy...
   (*c*) Table No......................

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4. (*a*) Name in full...
   (*b*) Present Address...................... ....
   ....

---

5. (*a*) Occupation and nature of duties.............. ....
   (*b*) Race...................... Religion..................

---

6. (*a*) Father's Name...
   (*b*) Permanent Address........................... . ...
   (*c*) Place of Birth, (*d*) Date of Birth: Born at............. in the district of...... ......on the.................. day of...........in the year 19 .
   (*e*) What evidence of age will be furnished ?............ .

Evidence of Age must be furnished to the satisfaction of the Directorate before any Claim under this Policy can be paid; it should, therefore preferably be furnished along with the Proposal, or as early as possible.

F. 3

7. Name of Nominee or Nominees to whom money shall be paid in the event of early death.	Age.	Address.	Relationship.

"This nomination shall automatically cease when an assignment or transfer of a policy is made."

8. (a) ***Particulars of previous Assurances and uneffected Proposals, if, any, to be stated in the columns given under: With Indian Insurance or with other Companies.***

NAME OF COMPANY	Policy No.	Sum Assured	In Force or lapsed	* Accepted at ordinary rates or with modification	Declined, postponed, or withdrawn by yourself.

* If modified, please state here how exactly the proposal was disposed of, namely, whether with (a) any reduction in term, (b) change-in plan proposed, (c) deferment in risk, (d) lien on the sum assured, (e) extra premium, (f) and/or deferred participation in profits or with any other modifications.	
8. (b) Is any proposal now being made to any other company, or having been made remains undisposed of? If so, please state name of company in each case.	

9. State from what illness you have suffered giving date, duration and name of the medical attendants.	
10. What is the object of this assurance ? (*a*) Provision for family or old age ? (*b*) If not, state for what other purpose ?	(*a*)——— (*b*)———
11. Give Name, Occupation and Address of an intimate Friend (not being a relative and having no pecuniary interest in the Assurance) to whom reference may be made	Name ——— Occupation——— Address——— has known me for ....years
12, Have you made any deposit towards the first premium ? If so, when, what amount, and to whom ?	

No receipt for payment will be valid or binding on the Company unless made out on the Company's printed form and signed by one of the Chief Officers.

Mode of Payment of Premium.

Premiums are payable once a year in advance and a rebate of 1¼% is allowed on such payments. To suit the convenience of the assured premiums are also accepted in half-yearly, quarterly or monthly instalments. In case of half-yearly and quarterly payments no additional charge is required but in case of monthly payments one anna per rupee of premium has to be added to standard rates. Fraction of an anna will be counted as one anna This extra charge is necessary to cover additional expenses involved.

A rebate of eight annas per thousand sum assured on standard rates will also be allowed on single policies of Rs. 10,000/-or above, when the premiums are paid annually. "These privileges are not applicable to Children's Policies. Pure Endow: Policies and Annuity Policies."

Advance Premiums.

In case any amount is deposited with the Company for payment of premiums becoming due in future and the amount so deposited not being less than Rs. 25/ the Company shall allow interest on such deposits at rates to be declared by the Directors from time to time, according to market conditions, which can be ascertained from the Head Office of the Company. It is, however, guaranteed that such a rate of interest shall never be less than 2% per annum on the amount paid in advance.

Section 41 of the Insurance Act.

41 (1) No person shall allow or offer to allow, either directly or indirectly as an inducement to any person to effect or renew an insurance in, respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer.

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to one hundred rupees unless the default is made by a person effecting or renewing a policy in which case he shall be punishable with fine which may extend to fifty rupees only.

Declaration :

I the undersigned whose life is proposed for assurance do hereby declare that I am at present in a good state of health and that the foregoing statements are true to the best of my knowledge and belief and that I have not withheld or concealed any circumstance tending to render an Assurance on my life more than usually hazardous and/or risky. I hereby agree that the foregoing statements, the declaration and the answers to the questions to be put to me by the Medical Examiner of the Company as well as any other statement made by me in connection with this proposal shall form the basis of the contract between me and the Company and that if any untrue averment be contained therein, all moneys which shall have been paid up on account of the said Assurance shall be forfeited and the Assurance itself shall be absolutely null and void. and I further agree, in the event of my failing to take up the Policy within 21 days from the date of the Company's letter demanding payment of first premium, to pay to the Company the sum of Rupees twenty for preliminary expenses. I have read Section 41 of the Insurance Act IV of 1938 printed above, the statement of your mode of payment and advance premiums.

Signed at............this ....day of ....19......

Witness..................................

Designation......... .... *Signature of the Proponent (in full)* } ....

Address... ....

....

Signature of Agent...................... ....

Licence Number................. ....

Address...................... . ...

2. *Medical Examination.*—The proposal form is studied by the life insurance office and on its being found satisfactory, it asks its medical doctor to examine the proposer and to report on the state of his health. The doctor examines the proposer, especially in the light of the information supplied in the proposal form. He examines the heart and the lungs, measures height, weight, chest and abdomen, notes physical defects or peculiarities and takes into account other necessary factors. Usually insurance companies have printed forms of the medical report for the guidance of the medical examiner. In our country, unfortunately, medical courses do not include the course on the examination of lives for life insurance. Insurance companies, therefore, find it necessary to have a printed form for the guidance of the medical doctor. However, it is an open secret that this task is very carelessly performed, as a general rule, in our country. It is naturally expected that if the medical examination is conducted with care and efficiency, the mortality statistics will register a fall, making a reduction in the premium rate possible.

3. *Acceptance of the Proposal.*—The insurance office makes a careful examination of the proposal in the light of the information supplied in the proposal form and disclosed by the medical examination. If the life is found to be normal, or excellent, the proposal is accepted and the proposer is asked to pay the first premium. It should, however, be clearly understood that the acceptance becomes effective only when the first premium is paid. If the first premium is not paid, the

No. 13.

RIVATE AND CONFIDENTIAL

Form (D)

X Y Z LIFE ASSURANCE CO., LTD.

Addl. Fee Cheque No............ Head Office : Fee Cheque No...........

A B C Buildings, Post Box 148,

Rs.........Dated... BOMBAY Rs.........Dated...........

MEDICAL EXAMINER'S REPORT

on the Life of Mr...................................... ....Aged.........

1. (a) Who introduced the applicant to you?	(a)
(b) (1) Are you personally acquainted with the applicant? ...	(b) (1)
(2) If you have attended him professionally, state when, and for what complaint	(2)
(c) State minutely such personal marks and peculiarities as will enable the applicant to be identified hereafter.	(c)
(d) Are you satisfied of his identity?	(d)

Please satisfy yourself completely as to the Identity of the Applicant, as some cases of false personation have occurred.

2. (a) (1) Figure and physical development generally ... (2) Make of Chest	(a) (1) (2)
(b) Stature and Weight ... ... *Note.*—The Medical Examiner is specially requested to personally demonstrate to the applicant the procedure of complete Expiration and full Inspiration.	(b) Chest (over nipples) stripped } on complete expiration.........inches. on full inspirartion.........inches. Abdomen (over navel) stripped ......inches. Height (without boots).........Ft...........inches. Weight (with thin clothes).........St.........lbs. Has the Weight been increasing, decreasing or stationary?
(c) Nationality and Religion	(c)
(d) Is the complexion anæmic, puffy or otherwise unhealthy? If so, in what particular?	(d)
(e) What is his apparent age?	(e)
(f) Does he show any signs of degeneration or premature age and if so, what are they?	(f)
(g) Is there anything injurious to health in his place of residence, occupation or ordinary manner of life?	(g)
3. Respiration. (a) Have you examined his lungs with the Stethoscope and by percussion?	(a)
(b) Are there any abnormal sounds present? If so, their character?	(b)
(c) Has he had any spitting of blood, or ever suffered from Bronchitis, Influenza, Pneumonia or Pleurisy? If so. when?	(c)
(d) Is he subject to Sore Throat, enlarged tonsils, asthma, habitual cough, or shortness of breath?	(d)
(e) What is the frequency and character of the Respiration? (See special Instructions.)	(e) Rate.........per Min. Character.........*See below,

4. **Circulation.** (a) Have you examined the Heart and great vessels with the Stethoscope?	(a)
(b) Is the Heart normal in size, position and impulse? If not, in what particular?	(b)
(c) Is there any abnormal sound with the heart's action? Or any indication of disease of heart or vessels?	(c)
(d) (1) Has he ever had attacks of Palpitation or difficulty in breathing, or dropsy or any oedema of the face or ankles?	(d) (1)
(2) Are the heart sounds normal, weak or accentuated?	(2)
(e) (1) What is the Rate and Character of the Pulse?	(e) (1) Rate.........per Min. Character *See below.
(2) Is it constant and equal on both sides?	(2)
(f) (1) Is there any venous fulness or pulsation in the neck? (2) Is it short and thick?	(f) (1) (2)
(g) Blood Pressure—To be carefully recorded (1) in all cases of Rs 5,000 and upwards, (2) on all lives aged 50 and upwards, (3) in all cases where the Examiner detects or there is a past history of Albuminuria, Nephritis or Heart Disease.	(g) Systolic. | Diastolic. | Pulse Pressure. | Instrument used.

* *Note.*—It is particularly requested that the number of the Pulse and Respiration be stated in every case. Also, if the frequency of these be found above 88 and 24 respectively on first examination they should be again taken, and in the case of the Pulse, in the 3 postures standing, sitting and lying down, and under "the eye-ball compression" and "holding the breath with mouth open" tests, until fully satisfied of the character, and the results noted herein.

5. **Digestion.** (a) Does the Tongue indicate disturbance of the digestive functions?	(a)
(b) (1) Is there any Pyorrhœa Alveolaris, and if so, is it marked or slight?	(b) (1)
(2) If not, are the Teeth and Gums otherwise healthy?	(2)
(c) Is the Liver or Spleen enlarged? If so, is the enlargement just within, or how much beyond the costal margin?	(c)
(d) Has he ever had any affection of the Liver, gall bladder, Stomach or Bowels, Appendicitis, Fistula or Hæmorrhoids, and if bleeding and when? The Parts must be examined in all cases. (See Special Instructions.)	(d)
(e) Has he had Diarrhœa, Dysentery, Sprue, Gastric or Duodenal Ulcer or Jaundice, of what nature, when and for what length of time?	(e)
(f) (1) Is he suffering from Hernia? If so, of what nature?	(f) (1)
(2) Is a well-fitting Truss or Support regularly worn?	(2)

6. Genito-Urinary Diseases. (a) Has he ever had Renal Disease. Colic, Stricture, Stone, Gravel or other disease of the Genito-Urinary System and when?	(a)
(b) Examine the Urine for Sugar and Albumen, note *both* the Specific Gravity and quantity passed at examination, and say if healthy. *Note.*—If the Specific Gravity is above 1024 or below 1010 please give reason for same and make a second examination, giving *both* quantity and Specific Gravity. If albumen is found on first examination, two further examinations should be made on each occasion about two hours after a full meal and the results recorded.	(b) Quantity passed at examination . ... Specific Gravity........................ .... Albumen... ....Sugar............... Reaction... ....Is it healthy?...............
(c) Was the Urine passed in your presence ?	(c)
(d) Has he had Venereal disease, as Gonorrhoea, Gleet, Syphilis, Hard or Soft Chancre or Bubo, and, if so, when and in what form and with what result?	(d)
(e) Has he had any Varicocele, Hydrocele, Filariasis, Haematocele, Orchitis or any other disease of the Testis ? If Hydrocele is present. give circumferential girth of *whole* Scrotum and vertical girth of each side in inches.	(e)

7. Nervous System. (a) Are there any indications of Vertigo, Epilepsy, Paralysis, incoordination of movements, tremors of hands or fingers. Insanity or any other disease of the nervous system?	(a)
(b) Of Neuralgic Affection or any form of Headache?	(b)
(c) (1) Has he ever had any disease of the Eye, or (2) suffered from Deafness, Earache or any discharge from the ear, when and for how long? (3) State their present condition.	(c) (1) (2) (3)
(d) Are the pupillary and patellar reflexes normal? If not, give particulars.	(d)
(e) Particularly state if you have reason from report, observations, general appearance of the Applicant, or from any particular symptoms such as tremors of hands, fingers or tongue to suspect that he is *not of* Temperate Habits in any respect or is addicted to heavy smoking.	(e)
8. Extremities and Surface :— (a) (1) Are there marks of any cutaneous disease, or (2) Small-pox or vaccination?	(a) (1) (2)
(b) (1) Do you find any enlarged Glands, Scars, Tumours, or Varicose Veins, or any evidence of Tubercular Disease, and where? (2) Are there any physical defects or deformity? If so, how far do they handicap the applicant?	(b) (1) (2)
(c) Do you find any enlargement of the Thyroid Gland ; if so, state whether it is stationary or increasing in size during the past year, whether the whole thyroid is involved or only a part, and whether any toxic or pressure symptoms are present?	(c)

9. Fevers. (a) Has the Applicant had Gout, or acute, sub-acute or chronic Rheumatism ; if so when, and what parts have been affected, how often, and with what severity and results?	(a)
(b) (I) Has he had Fever of any kind, Filariasis or Plague and when ?	(b) (1)
(2) What was its nature, severity, duration and results as affecting the general health ?	(2)
10. Describe fully and unreservedly any disease or circumstance other than above referred to, or known or suspected by you rendering the life more than usually hazardous ?	
11. Should you know, or even suspect the existence of any circumstance, or fact, past or present, with which the Company should be made acquainted in this case, but not seemingly called for in the printed Queries in your Report and not there mentioned by you, please to do so here ; else make sure that the information reaches the Head Office, by letter direct and at once.	

2. For Females.	
(a) Do you find any evidance or have you any suspicion of pregnancy?	(a)
(b) How many conceptions have taken place?	(b)
(c) How many have gone full time? How many miscarried, with cause and date?	(c)
(d) Are the functions of the ovaries and uterus normal?	(d)
(e) Has the menstruation ceased? If so, since when;	(e)
(f) Is there any suspicion of organic disease of the ovaries, or uterus? If any operation performed, cause and date.	(f)
(g) (1) Has a per Vaginal examination been made? (2) If so, by whom?	(g) (1) (2)
(h) Are the breasts healthy? *Note.*—The Parts must be examined and a per Vaginal examination carried out in all Female cases.	(h)

SUMMARY AND CONFIDENTIAL STATEMENT AND OPINION

Note below your opinion of Life with reference to the following classification :

FIRST CLASS: (Good Life). A Life in perfect health and of sound constitution with good personal and family history and with prospects of longevity as good as those of healthy persons generally of the same age.

SECOND CLASS : (Fair Life). A Life which from family history, or personal history or condition has prospects of longevity not as good as a First Class Life but which may be accepted with an extra (In this class state what extra you would consider necessary and for what reasons.)

THIRD CLASS : (Bad Life). A Life which is uninsurable.

Signature ....

Qualifications and where obtained..

Appointment..

Address and Date..

Note.—If this date varies from that on which Personal Statement was signed by Proposer the Medical Examiner is desired to state reason.

X Y Z Life Assurance Co., Ltd.

(Incorporated in India, 1874.)

PERSONAL STATEMENT

QUERIES TO BE ANSWERED CORRECTLY AND LEGIBLY BY THE LIFE TO BE ASSURED IN HIS OWN HANDWRITING.

ANSWERS must be given in words. Strokes of the pen or dots or dashes cannot be accepted as replies.

1. (a) What is your name and profession? (in full) ...	(a)
(b) Give previous occupation, if any (in full) ...	(b)
(c) What is the amount and system under which you wish to insure Your life?	(c) Amount............ . ...System.......... Period...................

2. Your age nearer birthday? ... ...

Note.—When proof of age can be furnished the applicant is requested to send such proof with his proposal.

3. Are you (a) Married, or (b) Single? ...	(a) (b)
4. (a) Have you had small-pox and when?	(a)
(b) Have you been Vaccinated successfully, if so when and how often?	(b)

5. (a) Have you ever suffered from Cough, Shortness of Breath, Palpitation, Asthma, Pneumonia. Pleurisy, Consumption or any other disease of the Chest ?	
(b) Appendicitis, Jaundice. Dropsy, Diarrhoea, Sprue or Dysentery, Anæmia, Kidney Disease, Colic, Varicose Veins or Ulcers, Piles, Fistula, Diabetes or Carbuncle ?	(b)
(c) Typhoid, Influenza, Filariasis, Elephantiasis of leg or scrotum, Kala-Azar, Blackwater or any other Fever ?	(c)
(d) Insanity, Fits, Paralysis, Gout, Rheumatism, Syphilis, Gonorrhoea, Hard or Soft Chancre, Stricture, Varscocele, Hydrocele, any swelling or tumour of the testis, or other organic disease or infirmity ?	(d)
(e) Do you ever suffer from Malaria ? If so, how often and for how long. and the date of the last attack ?	(e)
(f) Auy other illness, accident or injury, Whether considered by you to be Important or No ? If so, give particulars stating when and how long you were confined to bed or to the house.	(f)
(g) (1) Are yon suffering from any kind of Hernia ? (2) If so, do you wear a Truss regularly and since when ?	(g) (1) (2)
6. (a) How long have you resided continuously in India, Burma or in other tropical climate ?	(a)
(b) Have you been compelled to leave India or the Tropics, or to reside in the Hills for the benefit of your health ?	(b)
(c) If so for what disease and when ?	(c)
(d) Has your weight been increasing, decreasing or stationary	(d)

7. (a) Are you of active habits?	(a)
(b) Are you sober and temperate?	(b)
(c) Have you ever been of intemperate habits? ...	(c)
(d) Do you take Alcoholic Liquor?	(d)
If so, how much during the day, of what kind, and at what hours?	
(e) Are you addicted to (1) tobacco smoking or (2) to the use of any narcotic drug?	(e) (1) (2)

8 Family History.	Age if living.	Usual state of health with special reference to aliments, if any, during the last year or two.	Age at death	Exact cause and Date of death and duration of last illness * See below.
Father				
Mother				
Brothers ... { Total Living ——— / Total Dead ——— }				
Sisters ... { Total Living ——— / Total Dead ——— }				
Wife (or Husband)				

Note.· If the cause of death be Fever, the date, nature and duration of illness, and symptoms exhibited, must be given, especially whether accompanied by any Cough.

If the cause of death be Childbirth, the time that elapsed between the birth of the Child and death of the mother and the nature of the illness, must be given.

If the death be due to Drowning or similar other fatality, state clearly if it were accidental, suicidal or in delirium.

9. Is there any hereditary disease in your family such as Insanity, Epilepsy Gout, Rheumatism, Diabetes, Asthma, Consumption, Scrofula, Cancer or Leprosy on either the paternal or maternal side, and has any member or members suffered from any one of these and when?

10. Have you ever attended personally or come in close contact with any person, who may be your relative, friend or otherwise suffering from Consumption, Typhoid Fever or any other infectious Disease, or lived in the same house! If so, when, and from which of these diseases was the party suffering?

11. Has your Life ever been proposed for Assurance at this or any other Company or Companies and when? (Proposal for Assurance includes proposal for revival of a lapsed policy)	
If so. (a) Mention the name of the Company	(a)
(b) Was it accepted at the ordinary rate?	(b)
(c) Or at an increased rate, and if so at what rate?	(c)
(d) Or with a lien?	(d)
(e) Or otherwise than as proposed?	(e)
(f) Or delayed or declined?	(f)
12. (a) What has been your usual state of health? ...	(a)
(b) (1) When last were you under Medical treatment? (2) For what ailment and how long? ...	(b) 1) (2)
13. (a) Are you now absent from duty on Medical certificate	(a)
(b) Are yon applying for leave on Medical certificate?	(b)
(c) If so, send a copy of the Official Statement of your Case to this Office.	(c)

14. For Females.	
(a) Do your observe purdah?	(a)
(b) If unmarried or a widow, do you expect to marry or remarry in the near future?	(b)
(c) (1) Are you menstrual periods regular? ...	(c) (1)
(2) When did you menstruate last?	(2)
(d) Are you pregnant at present?	(d)

DECLARATION TO BE MADE BY THE LIFE TO BE ASSURED AFTER EXAMINATION BY THE MEDICAL EXAMINER

This Declaration to be read over and also signed, in the presence of Medical Examiner.

* Name of Medical Examiner, to be given in full.

I, the undersigned.. the person whose life is proposed to be assured, do hereby declare that according to the best of my knowledge and belief I am now in good health, that my age does not exceed.................years, that the foregoing statements are true, and that I have fully and faithfully answered all such questions as have been put to me by *Dr.................Medical Examiner, without concealment or reservation, of any kind, and I agree in case I fail to complete the proposal by due payment of the first premium, to pay to the Company the amount of the medical fee incurred by it on my account in reference thereto;

Declared and signed at......................................this......................day of..............................19........ before me.

.... Medical Examiner.

.... Usual Signature of person whose Life is to be Assured.

TO THE MEDICAL EXAMINER.

SPECIAL INSTRUCTIONS.

The Medical Examiner is requested to note the following instructions which have been drawn up for his guidance to enable him to assist the Directors as much as possible in dealing fairly and equitably with the proposal :—

PERSONAL STATEMENT

Before examining the Proposer the Medical Examiner should read over carefully the answers to the queries filled up by the Proposer to see that they are complete in every respect particularly as regards the exact cause of death, and the nature, approximate date and duration of last illness of members of the Proposer's family. Fuller information should be obtained such as will explain the meaning of ambiguous terms like "Fever, Cough, Inflammation of Lungs, Childbirth, Dropsy, Accident, Old Age, General Debility, Natural Causes, Etc."

MEDICAL EXAMINER'S REPORT

Q. 2—It is important that the height weight and other measurements be carefully taken and noted by the Medical Examiner himself, as serious mistakes have been found to be possible otherwise, leading to a complete misapprehension of the nature of the risk. The weight must be taken on a weighing machine known to be in order.

Q. 3 & 4.—Attention is particularly drawn to the special instructions given for a complete and satisfactory repy to these questions. In respect of all Proposals of Rs. 5000 and upwards and of lives aged 50 and upwards as also where the Examiner detects or there is a past history of Allbuminuria, Nephritis or Heart Disease, the Blood Pressure (Systolic and Diastolic) measured by a Sphygmomanometer should be carefully recorded.

Q. 5 & 6.—It is essential that the parts be examined to ascertain as far as possible the correctness of the Proposer's statements as to Hernia, Venereal Diseases, Hæmorrhoids, Hydrocele, etc. The approximate date and duration of all previous illness should be noted as far as possible.

Q. 6 (b).—Particular attention is directed to the instructions given to assist towards a complete and satisfactory reply to this question. The urine should be examined, in all cases, by the Medical Examiner himself. If Albumen is found on the first examination, two further examinations should be made on each occasion after a large meal and the results recorded.

The action of the Board depends largely on the thoroughness of your examination, and the fulness of the details sent in by you.

GENERAL

The examination should be carried out in daylight.

The Medical Examiner is requested to satisfy himself before making the examination that the proposal for assurance is actually completed and is in the hands of the Company or its Agents. Under no circumstances should he examine his own relatives or his employees or his immediate colleagues in the service, senior or junior, or any Proposer introduced by a relative who is an Agent.

The Medical Examiner is particularly requested to complete the Report fully in all respects to avoid any references and to state his appointment and qualifications in full as Medical Reports are not accepted from any but the Company's duly appointed Medical Examiners or in the absence of such, the Civil Surgeon of the station where the Proposer is to be examined.

The Medical Examiner is requested not to examine any female cases if he finds any evidence or has any suspicion of pregnancy, as to this.

The Medical Examiner is requested not to examine a proposer who has been already examined by him or any other within the preceding six months under a previous proposal to this Company, unless specially requested to do so by the controlling office.

It is required that no Medical Examiner shall on any account remunerate directly or indirectly any Agent of the Company in in any way and the Medical Examiner is requested to immediately report to the Head Office should he ever be asked for any such remuneration.

No information as to the Medical Examiner's opinion of the Life or the results of the examination must be communicated to the Proposer and the Report must be forwarded, sealed, direct to the Company at the following address :—

A cheque for the amount of the Medical Examiner's fee will be remitted immediately on receipt of the Report complete in all respects.

VEMO

Manager

risk does not commence. After the receipt of this premium, the insurance office draws up a proper policy and sends it to the insured. Should death occur in the intervening period between the payment of the first premium and the receipt of the insurance policy, the insurance company will have to pay the insured amount.

4. *Proof of Age.*—The insurance company requires the insurer to furnish proof of his age. Though this is a very important matter, the insured are generally allowed to furnish the proof whenever they like or find convenient. In several cases, the proof is not furnished at all and the insured dies. In such a case, his successors have to prove his age, which becomes at times a very difficult affair. It is, therefore, very advisable to give proof as soon as the policy is taken. The copy of a certificate from some college or university or of a record of birth in a municipal register or the copy of horoscope prepared at the time of birth are some of the valid proofs of age.

Some Miscellaneous Matters.

Before leaving the introductory discussion, we may discuss some miscellaneous points at this stage.

The Premium.—We have already observed that the premium is a cash compensation that is paid by the insured to the insurer in exchange for the benefits received under the insurance policy. The rate of premium is not anything fixed or definite: it varies according to the type of policy purchased. If the reader cares to get hold of the prospectus of an insurance company,

he will find several tables of premiums given there and he will readily understand how the premium rate varies according to the type of policy. He will also discover that the premium rate also changes according to the age of the insured: the higher the age at entry, the greater the premium rate. The premium rate, it should be understood, is always stated for the insurance of Rs. 1,000.

Ordinarily the premium is payable annually. But every insurance company allows its customers to pay it periodically, say, semi-annually, quarterly or even monthly. Half-yearly premium is a little more than one-half of the yearly premium; similarly quarterly and monthly premiums are slightly in excess of the 1/4 and 1/12th of the yearly premium respectively—the extra charge representing the loss of interest to the insurance company. The insured is allowed the period of grace for the payment of the premium beyond the due date. The period of grace in the case of yearly, half-yearly and quarterly premiums is one month, whereas in monthly premiums it is usually 15 days.

The rates announced by an insurance company in its prospectus are applicable to a normal or average life. In case the proposed life is found to be subnormal, the proposal is accepted only after charging an extra premium to cover the extra risk. Similarly, if a man is engaged in a hazardous occupation, as for example in air force, or in the manufacture of arms and explosives, an extra premium is charged. This is technically known as "loading the premium."

The Policy.—The insurance company issues a policy on the receipt of the first premium. A Life Insurance Policy is a highly decorated and imposing document which embodies the terms of contract as agreed upon between the insurer and the insured and bears an adequate stamp. It is issued under the seal of the company, is signed by two directors and is countersigned by the manager. The following are the important clauses of a life insurance policy:

(1) The name of the insured and his occupation, address and age next birthday.

(2) The amount for which the policy has been granted and whether it is with or without profits.

(3) The amount of premium and the time when it is payable.

(4) The assured to give notice to the company if engaged in some hazardous occupation later.

(5) The cases in which the policy is to become invalid.

(6) The lapse and revival of the policy.

(7) The surrender value of the policy.

(8) The assignment of the policy.

(9) The settlement of claim.

Assignment of Life Policy.—A life insurance policy may be assigned by the insured to some other person out of love and affection or as a security against some

loan. The assignment is done by making an endorsement on the policy itself or by filling in a separate instrument of assignment, according to the terms of the policy. It is, however, essential that the notice of assignment should be given to the insurance company and its written consent obtained. The assignment will not be valid unless the insurer has given his consent. If the insured dies before making an assignment, his heir will have to produce a succession certificate in order to establish his claim.

The assignee of a life insurance policy need not have insurable interest in the life which is the subject-matter of insurance. It would, thus, be appreciated that a man, who is ordinarily debarred from taking a policy on somebody else's life due to want of insurable interest, can have the same thing done by making the person concerned obtain a policy on his own life and then assign it to him.

Surrender Value and Non-forfeiture.—If the insured fails to pay insurance premiums, at any stage, the policy ordinarily lapses, subject to the terms and conditions agreed upon between the insurer and the insured. In such a case several alternatives are open to the insured.

He may surrender the policy to the insurance company and receive a certain value from the insurance company which is known as the 'surrender value.' Surrender value is less than the total number of premiums paid-up-to-date. Usually it is approximately 25 per cent or 30 per cent of the total premiums paid in

the case of without-profit policies and 40 per cent of the total premiums in the case of with-profit policies. It must not be thought that the surrender value is an insufficient return to the policy-holder: for the deduction made from the total premiums paid is in respect of the risk already covered, the expenses of management already incurred and the extra risk accruing to the whole business due to the withdrawal of the policy.

Since surrender value involves much loss to the insured, he is usually given the alternative to have the policy "paid-up." It means that the insured becomes entitled to all the premiums he has paid up-to-date; but this sum becomes payable only when the policy would have become a claim, had the premium payment continued. Policies also become paid-up proportionately.*

It is also sometimes provided that in case the insured fails to pay the premiums, the insurance company automatically begins to use the surrender value towards the payment of the premiums and the policy lapses only when the entire surrender value is exhausted.

Loan on Policy.—If the insured is badly in need of money, he is entitled to take a loan from the insurance company on the security of the policy. The loan is given at reasonable rates of interest to the extent of 90 per cent or 95 per cent of the surrender value.

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* See Chapter 9, *poste*.

CHAPTER 4

TYPES OF LIFE INSURANCE POLICIES

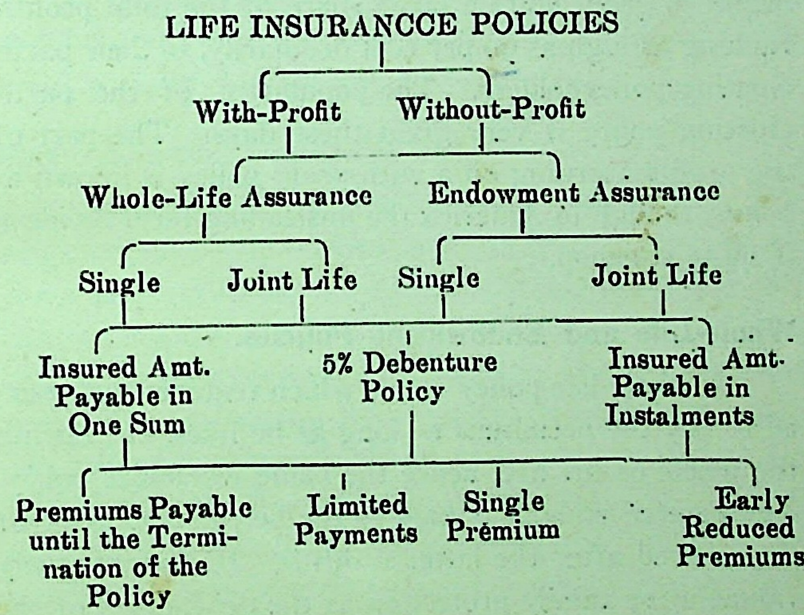
When a man proposes to purchase a life insurance policy, he primarily wants to know two fundamental things: (1) What rights and privileges are given to him under the terms of the policy; and (2) What would be his financial commitments in case he purchases the policy.

The rights and privileges which insured persons wish to have under the terms of the policy vary considerably. Similarly, the financial obligations which they can afford to assume also considerably differ. The natural consequence has been that numerous types of policies, involving varying degrees of financial obligations and conceding different degrees and types of rights and privileges, have been put upon the market by the fertile brains of insurance men; and new types of life policies are making their appearance every now and then.

It would, however, be wrong to argue that any one type of policy is better or cheaper than the other. For, actuarially and mathematically, all stand on the same basis. If the policy entitles its holder to larger privileges, the premium rate is also correspondingly increased. Conversely, if the premium rate is low, it would be found that the privileges under the policy are also few. This being the case, it would be wrong to declare any one type of policy as cheaper or better than the

other. Of course, it would be a different matter to state that any one type of policy is more suited under particular conditions than the other.*

Below is given a chart which shows a broad classification of life insurance policies. The chart is not intended to be exhaustive: it includes only some important types of these policies.



(Chart Showing a Rough Classification of Life Insurance Policies)

Participating and Non-participating Policies.

Participating or with-profit policies are those policies which are entitled to participate or share in the

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* See Riegel and Loman, *Insurance Principle and Practices*, Chapter V.

profits of the compnay, whereas non-participating or without-profit policies are not entitled to any such share. Other things remaining the same, the premium charged on a participating policy will be higher than that on a non-participating policy. Due to very keen competition among insurance companies, which tends to be international everywhere, insurance companies have begun to grant quite a large share of the total profits, ranking as high as 90 per cent ordinarily, to their participating policyholders. The popularity of the participating policy is very great these days. The part of the profits accruing on a with-profit policy is known as *bonus,* though in America the misleading term *dividend* is quite common.

Whole-Life and Endowment Policies.

A whole-life policy is one which requires the insured to pay the premiums so long as he lives, *i.e.,* during the whole of his life, hence the name whole-life policy. The insured amount is paid to the heir or successor of the insured after the latter's death. It is extremely valuable for family protection as the dependents of the deceased are left with a decent sum after he is snatched away from them. Its premium is also less than many other kinds of life policies. The disadvantage of a whole-life policy is that the insured has to pay the same amount of premium even after his retirement when his earning capacity declines and the payment, therefore, becomes a heavy burden. The insured may even be troubled by the force of such circumstances to surrender

the policy. Because of this disadvantage, whole-life policies are not very popular.

As a provision for old age, endowment policy is extremely suited. Such a policy is to run for a fixed number of years. The insured has to pay the premiums usually throughout this term. The insured amount becomes payable either on death or the expiry of the agreed term, whichever comes earlier. The rate of premium of endowment policy is slightly higher than what it is for a whole-life policy.

Single Life and Joint Life Policies.

Generally a policy is taken on a single life. But sometimes a policy on two or more lives is also issued. It is known as a *joint life policy*. In this latter case, the insured amount is payable on the death of either of the insured to the survivor or survivors. It has a domestic use and a commercial use. Generally such a policy is taken on the lives of husband and wife, so that on the death of either, the survivor may get the insured amount. Such a policy is also taken on the lives of partners so that the share of the deceased partner may be paid out of the policy money without crippling the business financially.

In the case of a joint whole-life policy, the insured amount becomes payable on the happening of the first death, whenever that may occur. In the case of joint endowment policy, the insured amount becomes payable on the expiry of the agreed term or on the happening of the first death if that takes place before such expiry.

Ordinary, 5% Debenture and Instalment Policies.

Ordinarily the insured amount is paid in one lump sum when the policy becomes a claim. This is the usual arrangement. But sometimes the insured amount becomes payable after a fixed term of years, usually ten or twenty years, from date of the policy becoming a claim. The insurance company pays interest during this term on the outstanding balance generally at 5 per cent per annum. Such a policy is known as 5% *Gold Bond Policy or 5% Debenture Policy*. The advantage of this policy is that usually the beneficiaries have a little or no financial experience when the policy becomes a claim and might squander away money either through careless expenditure or investment if they get it at once; this policy makes them wait for a few years till they have acquired experience, during which period the money fetches quite a good rate of interest. The rate of premium in this case is slightly higher than when the insured amount is payable in one lump sum; for the insurance company guarantees quite a high rate of interest when the insured amount becomes an investment.

A still further variation is the payment of the insured amount in annual instalments. In this case no interest is generally paid on the un-paid balance. The premium charged on such a policy is slightly lower than when the insured amount is payable in one lump sum; for the insurance company is able to earn interest on the up-paid sum by investing it profitably. This is known as *instalment life insurance.*

Regular, Limited Payment, Single Premium and Early Reduced Premiums Policies.

The most ordinary arrangement is that pemiums have to be paid regularly so long as the policy remains in force. A fixed premium is paid in the beginning of the policy to be repeated each year. But though the standard rate is the annual rate, premiums are sometimes paid half-yearly or quarterly. A policy on which annual premiums have to be paid may be converted later on into half-yearly or quarterly premiums payable policy or *vice versa*. The rate of premium for the half-yearly or quarterly plan exceeds the yearly premium by a little because of loss of interest on the up-paid premium during the period of its non-payment, increased management expenses and loss of some premiums in the year of death.

According to the current practice when the premium is paid in half-yearly or quarterly instalments, each half-yearly or quarterly payment is considered to be a separate premium and the un-paid premium of this kind due in respect of the year of death is not deducted from the insured amount when satisfying the claim on the policy. The old practice of deducting the un-paid portion of the annual premium from the insured amount has now become, more or less, obsolete.

According to the *limited payment premium plan*, the premium is payable only up to a certain number of years—say 10 or 15 years. In the case of limited whole-life policy the insured ceases to pay premiums after an

agreed term. If he takes a policy when he is 40 years of age, his premium commitments may cease at 55 or 60 when he is contemplating retirement. This is its great advantage over the ordinary whole-life policy which requires the insured to continue to pay the premiums even after his retirement. In fact, the limited payment whole-life policy has been devised to remove just this drawback of the ordinary whole-life policy. In the case of limited payment endowment policy, the term of the payment of the premiums is shorter than the period of the policy.

An extreme case of the limited payment policy is the *single premium policy* in which case the insured pays the entire amount of premiums at the commencement of the policy in one lump sum. As the amount to be paid as premium is very large, only rich persons can afford to buy it.

Another variety is the *early reduced premiums policy*. When a person has just settled in life, his income is usually small and he cannot afford to pay full premium on the policy he wants to purchase. In such a case, the insurance company agrees to take reduced premiums usually for the first five years, after which period full premiums are charged. The early premiums are one-half of the later premiums.

Other Types of Policies.

Double Endowment Policy.—The holder of an endowment policy gets the *insured policy amount* when the policy matures; and in the case of earlier death, the

representative of the insured gets *this* sum when death takes place. Under the double endowment policy, if the insured survives the stated number of years, he gets double the insured amount; but if he dies while the policy is in force, only the insured amount becomes payable. Double endowment policy is, thus a combination of endowment policy and pure endowment without return policy. Death benefit remaining the same, the rate of premium is higher in double endowment than in ordinary endowment. Its another effect on the premium rate is that, other things remaining the same, the higher the age of the insured and the longer the term for which the policy is taken, the lower is the premium rate.

Pure Endowment Policy.—An ordinary endowment policy is, in fact, an adulterated form of pure endowment plan. In the case of a pure endowment policy, the insured amount becomes payable only if the insured attains a certain age. If he happens to die earlier, he does not get anything. It is the survival which brings the insured amount or insurance benefit. The rate of premium in pure endowment policy is lower than in ordinary policy. It is most suited to those persons who want to enjoy the benefit of insurance themselves rather than make family provisions either because they have no heirs or no dependents or they do not feel any necessity to make an insurance provision for them. "Very few pure endowment policies are issued. Such a policy is not, strictly speaking, a life insurance policy at all, being rather the opposite of life insurance.

Sometimes pure endowments are issued on the lives of children for educational purposes."*

Pure Endowment with Return Policy.—This is a variety of pure endowment policy. In this case, premiums, paid up-to-date, are returned to the heirs of the insured if the insured dies before the expiry of the term.

Term Insurance Policy or Temporary Insurance Policy.—This policy runs for 1 to 7 years in foreign countries, though the term is sometimes found to be greater in this country. According to this policy, the insured amount becomes payable if the insured dies within certain period. In case he survives this period, he gets nothing. In this case, death brings insurance benefit. The reader would understand that this is just the opposite of the pure endowment policy; for whereas in this death brings insurance benefit in the other survival brings this benefit. This type of policy is not suited for family or old age provision; but it provides (i) security against a loan, (ii) protection while going on a voyage or journey, and (iii) protection to a person in the expectation of becoming an heir. The rate of premium is very low for such a policy.

Diminishing Term Policy.—In this type of term policy, the insured amount goes on diminshing each year according to a pre-arranged or set plan. This type of policy is generally taken by a debtor with a view to deposit it as security against a loan which is to be paid back in fixed instalments. Each year the insured

* Maclean, *Life Insurance*, p. 44 (foot-note).

amount is reduced by the amount of the instalment paid to the creditor.

Convertible Term Policy.—Sometimes the term policy carries with it an option to be exercised by the insured, if he so desires, to get this policy converted into a whole-life or an endowment policy. Medical examination is not made when conversion takes place.

Family Protection Policy.—It is taken for a particular term. If the death takes place before the agreed term, certain annuities are paid to the beneficiary till the expiry of the said term. On its expiry, the insured amount is paid. If the death does not take place during the term, then there is no annuity benefit, only the insured amount being payable on the expiry of the term. This form of policy has become rapidly popular. The Oriental Government Security Life Assurance Co., Ltd., of Bombay has been issuing policies of this type for sometime past with evident success. It describes this "Perfect Protecton Policy" in the following words:—

> "The Policy is intended mainly for the Young Man just starting married life and provides, in the event of the Assured's death during the first twenty years of the contract, a guaranteed income, equal to 10 per cent per annum of the amount assured, payable from the date of the Assured's death until the expiry of 20 years from the inception of the contract, when the sum Assured itself becomes payable in full. Thus the widow and family can be guaranteed an

adequate income until in most cases the eldest child has attained majority and the widow is relieved from all trouble and risk involved in arranging for a safe and remunerative investment of the policy moneys during the period in question."

"The Policy further provides for payment of the sum Assured in full in the event of the Assured's death occurring after 20 years from the inception of the Policy. It is recognised that by such time the expenses connected with the maintenance and educatoin of the family should no longer be so heavy and the provision ensured by payment and investment of the Sum Assured should be sufficient for future needs."

Besides the above-mentioned types of life insurance policies, there are numerous other varieties all of which cannot possibly be discussed during the course of this book. They are, however, not so popular as the above-mentioned types.

CHAPTER 5

THEORY OF INSURANCE

In its earliest stage insurance was conducted mostly on a voluntary basis and was known as "assessment" insurance. The chief feature of assessment insurance was that as soon as an insurer died, the insured amount was found or contributed by the survivors of the group in equitable proportions. This assessment of the individual contribution gave the name 'assessmentism' to the system. In this shape insurance did not involve any scientific principle worth the name.

When insurance passed into the hands of businessmen, it took quite a different shape. The insurance companies now required the insured to pay premiums according to a set schedule fixed in advance. The premiums represent nothing else than the price of insurance, the anticipation of which naturally involved a forecast of the cost of insurance. As mortality rate is the most important factor in the cost of insurance, it naturally involved a forecast of the mortality rate which will obtain in future.

In order to anticipate this mortality rate, old records of births and deaths were sought for and mortality rates, which may be defined as the number of persons dying per 1000 persons living, found out from these records, were assumed to obtain in future also. It was assumed, in other words, that the past experience

will repeat itself and the mortality rates in future will be the same as those in the past.

This assumption is based on the theory of probability, which says that the chance of an event taking place in a single trial will be found to obtain in practice if the trials are repeated quite a large number of times. If you spin a coin in air, the chances of the head or tail appearing are 50 per cent. But if the coin is spun for a few times only, slight deviations from this proportion may occur. But the larger the number of trials, the less will be the deviation. If, for instance, you spin a coin, 10,000 times in the air, it will be found that heads appear 5,000 times and tails also appear the same number of times.

According to a well known law of statistics, the figure of probable variation increases only as the square root of a number of cases. If we increase the number of similar risks a hundred-fold, the probable variation will be increased only ten-fold. The larger the extent to which you increase the number of risks, the less will be the increase in probable variation. Suppose, in a given locality out of 10,000 houses under observation for several years, ten are destroyed by fire per annum on an average, then average destruction is one house per thousand. But the actual loss has varied from year to year. Let us presume this variation to be 5 for 10,000 houses, other things remaining the same, the loss next year would be between 5 and 15. The area of uncertainty is then 10 (i.e., 15—5=10), or $\frac{1}{10}$ of 1 per cent. of the number of cases. If we increase the

number of houses exposed to the same risk of fire, let us say, a hundred-fold (from 10,000 to 10,00,000), the average loss will be 1,000; but the probable variation of the actual loss from the average will not increase hundred-fold to 500, but only ten-fold to 50. The actual loss that may be expected would then be between 950 and 1050. The area of uncertainty is now 100 or $\frac{1}{100}$ of 1 per cent. It can thus be said that "area of uncertainty increases as the square root of the number of cases, and that its ratio to the entire number of cases becomes correspondingly less.*

James Bernouilli has summed up the result in the two well-known propositions:—

(1) That the probability of events happening in numbers proportionate to their respective chances in a single trial is greater, the larger the number of trials or observations.

(2) That the number of observations or experiments may be so determined that the deviation from this stated ratio approaches certainty as closely as wished or desired.

In brief, "in the long run events will tend to occur with a relative frequency proportional to their objective possibilities." It is this theory which forms the scientific basis of insurance business.

S. G. Leigh puts this in a simple manner as follows. "The foregoing statement (relating to the real nature of insurance business) presupposes, it will

* Willett, *Economic Theory of Risk and Insurance.*

be noticed, that the percentage of failures to successes can be predicted, approximately at least; otherwise, it would be impossible to fix the proper charge for any particular assurance (which is paid in advance of the risk being incurred, for obvious reasons). In practice, such predictions of future rates of failure are made on the basis of past experience in the particular description of risk, and their acceptance as a measure of future risk depends, and successfully depends, upon a principle which may be described as the stability of average, derived from large numbers. It is a truism that, given similar conditions, similar results may be expected; and the larger the number of cases put to the test, or exposed to the risk, the greater is the reliance to be placed in the loss rate shown, as a measure of future risk. It is the business of the assurance expert to see as far as he can that conditions are similar (*e.g.*, in settling the assurance charge for steamships sailing to West Africa, he should base it upon past experience of steamship losses on the same route, and not, for example, on that of timber barques from the Baltic); and he will, naturally, strive to win his experience from as broad a basis as possible."*

The scientific basis of the insurance business may be said to consist of two parts:—

(1) Recording of the past mortality rates in the shape of *Mortality Tables* and supposing that these rates will obtain in future as well.

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* Leigh, *Guide to Life Assurance*, p. 2.

(2) Determination of the *Premium Rates* primarily on the basis of (1).

We will discuss each of them separately in subsequent chapters.

CHAPTER 6

MORTALITY TABLES

Modern insurance requires an anticipation of cost of insurance or mortality rates. This requires that past experience regarding mortality should be properly recorded. A table recording this experience is called 'Mortality Table.' It may be defined as *an instrument for anticipating future mortality rates on the basis of past mortality record.*

The following is the shape of a simple mortality table:—

Age	No. of lives at risk	Number of deaths during the year	Mortality rate per thousand

Mortality rate represents the number of persons who die in a year out of 1,000 persons. It is simply the proportion between the number of the deceased during the period and the number of lives at risk.

Death rates due to specific diseases is usually expressed as so much per ten thousand, because if expres-

sed as so much per thousand, it will be a decimal figure like 0.6 or 0.4 and so on, which is not quite comprehensible. To avoid such fractions, the expression per ten thousand is used.

Construction of the Mortality Tables.

An insurance company can prepare a mortality table out of its own past experience. For this purpose, a schedule would be drawn up showing for the previous year the total number of persons insured with the company and grouped according to attained ages and also the number of persons who died at each age. This schedule would commence at the earliest age at which insurance is granted and might extend to age 90 or more. The numbers dying at each age would then be conveniently expressed as a proportion of the numbers of that age who were 'at risk' during the year as so many per thousand insured; and these proportions would provide a means of estimating the future mortality and through it the future death claims. The following is a part of a mortality table based on the experience of one year, 1931:—

Age	Numbers insured	Numbers of deaths	Mortality rate per thousand
15	20	...	...
16	60	1	16.7
17	100	...	...
18	250	1	4
19	418	2	4.8
20	1020	3	2 9
Etc.	Etc,	Etc,	Etc,

"The proportions dying" or the mortality rate should better be based, not on the experience of *one* year only, but on the experience of *a number of years*. The rate thus arrived at will be more dependable, for the abnormality of some years will be neutralised by the opposite experience in some other years; so that average results will be achieved. If the experience of more than one year were to be used, the number of insured would naturally have to correspond with the number of years adopted. In technical language, the deaths during the whole period would have to be compared, not with the number of persons who are insured, but with the number of years' *exposure to the risk* of death.

If it is now desired to ascertain the probable number of deaths in the coming year; this may be done by arranging a schedule, as given before, showing the number of insured and the year in question at each age and multiplying the number at each age by previously ascertained death rate per thousand and dividing this by 1,000. This is generally the process by which life insurance companies ascertain their "expected deaths." They usually calculate their "expected claims" by multiplying the rate of mortality by the total amount of insurance at each attained age instead of by the number of persons insured.

Standard Mortality Table.

A mortality table prepared out of the past experience of a single company is not very dependable.

According to the Theory of Statistical Regularity or Inertia of Large Numbers, the larger the field of observation, the more reliable is the result. As such, it is advisable to strike out mortality rates from the data relating to several companies and several localities. A table of mortality thus prepared is called the Standard Mortality Table.

The rate of mortality increases with age, very gradually at first but at an accelerated pace later. The following is a specimen of a Standard Mortality Table:

MORTALITY TABLE

(The final portion of a larger table)

Age (x)	Survivors at the Age (lx)	Deaths between the age and the next higher Age (dx)
85	445	78
86	367	71
87	296	64
88	232	51
89	181	39
90	142	37
91	105	30
92	75	21
93	54	14
94	40	10
95	30	7
96	23	5
97	18	4
98	14	3
99	11	2
100	9	2
101	7	2
102	5	2
103	3	2
104	1	1

x in the above table represents age. The heading lx is merely a conventional symbol to express shortly the number of lives surviving at age x. Thus l 80, l 81, l 82, signify the survivors at age 80, 81, 82, etc. The heading dx signifies the number of deaths which occur between the ages x and $x+1$. d 81, for instance, represents the number of deaths which take place between the ages 81 and 82. It is interesting to note that having formed the lx column and then drawing up the dx column by the use of ascertained rate of mortality, calculations can be tested by taking the ratios of dx to lx for each age in succession when the basic mortality rates should be reproduced.

Graduation.

The rates of mortality ascertained from the statistical data cannot be presented in the shape in which they have been calculated as they invariably fluctuate from year to year instead of having a smooth run. In a case, it might well happen that the mortality rate is found lower at age 40 than at 39; while at 41 it might abnormally shoot up! These irregularities are only accidental and as they do not accord with things as they should be, they are removed by "graduating" these figures. Graduation removes these accidental and awkward irregularities and makes the death rate smooth. "The simplest methods of graduation consist merely in smoothing over the irregularities by averaging the results at two or three ages; and the process has been amplified from this, through the

graphic method, by which the mortality is represented by a diagram, to the assumption of a law of mortality which has been found to adhere very closely to the several large investigations, and which provides great facility for the solution of complex problems."

The graduated or adjusted figures should be compared with ungraduated figures with a view to scrutinise the type of adjustment and to judge its accuracy. The tests of a good adjustment are stated to be: (i) general regularity in the mortality rates; (ii) close agreement in the total number of deaths in graduated and ungraduated tables; and (iii) the frequency in change from positive to negative deviations, which indicate that original figures have been closely followed.*

Select Mortality Table.

The standard mortality table tells us the number of persons of a particular age dying during the course of the year. But the death rate among the persons of the same age is not always and necessarily the same. Doctor Sprague was probably the first man to show that the mortality rate among the persons of the same age varies according to the length or duration of the life policies. Other things remaining the same, the longer the period for which the policy has been in force, the higher will be the death rate. For instance, if 500 persons of 30 years of age were insured 2 years back, their mortality rate between 32nd and 33rd year will

* Henry Moir, *Life Assurance Primer*, pp. 44-45.

be less than the mortality among the other 500 persons of the same age who were insured 8 years back. This is due to the fact that in the former case the lives were put to medical examination only 2 years back and are quite fit. But in the latter case, the lives were examined 8 years back and sufficient time has elapsed for the new diseases to crop up and for the development of other factors which weaken the health or result in higher mortality rate. In technical language, "the effect of selection wears off" with the passage of time and is completely lost after ten years.

The mortality tables which show the effect of selection on the mortality rate are known as *Select Mortality Tables.* A select mortality table gives ten death rates relating to persons of the same attained age according to the number of years that have elapsed since the admittance of lives to insurance. Such tables were first prepared by Dr. Sprague.

The mortality rates in the select mortality table are known as *select mortality rates.* After the tenth year since selection—the effect of selection wears off in ten years—all the lives of the same age show the same mortality rate. This mortality rate is known as the *ultimate mortality rate.*

Available Statistics.

In the preparation of mortality tables, the mortality statistics that have to be used can be derived from two principal sources, *viz.,* (i) *Population Statistics* contained in censuses, registers of births and deaths;

(ii) *Life Insurance Statistics* collected by life insurance companies themselves. Originally in the absence of life insurance statistics, population statistics were used in the construction of these tables; but as life offices gathered experience, they tended to make use of their own statistics. There is no doubt that if both these statistics were available and a choice were offered between them, one would naturally prefer life insurance statistics which are more reliable. To the extent that insured people are not truly representative of the entire population, life insurance statistics will be more reliable than population statistics.

Early Mortality Tables.

When the necessity of constructing mortality tables was originally felt, there was a conspicuous lack of data relating to the lives of the assured on the basis of which such tables could be framed. Therefore, the pioneers in this field had to draw upon the records made in the burial registers which crudely served the purpose of the data they actually wanted but which were the only statistics that could at all be secured. From such statistics, three important tables were made:—

1. *Graunt Table*:—This was constructed by Captain Graunt from the London Bills of Mortality for the years 1728—1737.

2. *Halley Table*:—This was constructed by the famous astronomer Edmund Halley. The basis was the records in the burial registers

of Breslau (Germany) for the years 1687—1737.

3. *Northampton Table*:—It was formed from records in the burial registers of the town of Northampton for the period 1753—1780.

These three tables were defective for the reason that they were constructed only on the basis of death rates. These data could only give the *dx* column. But what about the *lx* column? That could not be filled in for statistics regarding the number and composition of population were lacking. So that had to be prepared on the supposition that the number of births was equal to the number of deaths every year. This presumption of stationary population made it possible for the *lx* column to be prepared. It was, however, not quite satisfactory a method to follow. This would have been correct in case (i) the number of births was exactly equal to the number of deaths, (ii) health and vitality of the population had remained constant and (iii) population would have neither increased nor decreased by migration. None of these conditions could be said to have been in existence. But in spite of this defect, at least the Northampton Table continued to serve as the basis of premium calculation for some time to come. It was adopted by the Equitable Society in 1881 and was very popular thereafter.

Carlisle Table.

The second stage in the history of the construction of mortality tables was marked when the Carlisle Table

was prepared out of the records of births and deaths of the two parishes of Carlisle for a period ranging from 1779 to 1787 for which period complete records of death were available; there was also the census taken in 1780 and in 1787. The data thus available were certainly more comprehensive than was the case with the foregoing tables; but still as compared to modern standards, they were still scanty and inadequate. However, it represented an improvement and inspite of its shortcomings the Carlisle Table acquired considerable popularity. As a matter of fact, even today it is used in certain specific cases.

Modern Tables.

As life insurance became widespread and more extensive, statistics began to accumulate in the archives of life offices themselves. These were the statistics which could be considered as reliable and full and the tables could very well be constructed on their basis. Some life offices, therefore, compiled statistics out of their own experiences and later on joined together, combined their respective statistics, and prepared consolidated tables for their guidance. Some of the important tables are the following:—

1. *Seventeen Offices' Experience.*—This was published as early as 1843 and was perhaps the earliest modern table.

2. *Twenty Offices' Experience or Healthy Males Table.*—These tables were prepared by the Institute of Actuaries and published in the year 1869. They were

based on cmprehensive statistics relating to the actually insured lives. The experience of twenty life offices, English and Scottish, was consolidated. The experience extended over a long period and great skill and care were employed in preparing them. As such they soon became very popular standard tables and held the field before the publication of the British Offices' Table. The data were divided into four sections and four tables were constructed as below:

(*i*) Healthy Males Table (symbol: H^m).

(*ii*) Healthy Females Table (Smbol: H^f).

(*iii*) Healthy Males and Females (Symbol: H^{mf}.)

(*iv*) Diseased Males and Females (Symbol: D^{mf}).

3. *British Offices' Tables.*—The purpose of constructing these tables was to check up the accuracy of the Healthy Males Tables and to find out if the method of construction could somehow be improved upon. The data that were employed were the most extensive used up to the time of its construction—1893. Mortality experience of no less than 60 life offices were consolidated and no less than 1,000,000 lives were involved. They soon became the standard tables and they at once replaced the Healthy Males Tables to a great extent. The symbol for these tables is O^m.

4. *Actuaries' Tables.*—As the British Offices' Table was constructed as early as 1893 and much water had flowed down the Ganges during that period, it was deemed advisable to prepare a table out of recent experience. With this end in view, tables were construct-

ed out of the experience of 50 life offices during the period 1924-1929. The tables were actually published in 1934. The symbol for these tables is A 1924-1929. These tables disclosed definite improvements in the mortality rate; and further revealed that the difference in the mortality rates of medically examined and non-examined lives was very small. This latter finding greatly strengthened the modern case for non-medical insurance.

CHAPTER 7

PREMIUMS

Premium is the consideration which the insured has to pay to the insurance company in exchange for the benefits provided by the latter under the terms of an insurance policy. In the calculations of insurance companies, it is presumed that premiums will be paid annually. The standard rate of premium is, as such, an annual rate; but with a view to make the payment convenient to the insured, they are generally permitted to be paid semi-annually or quarterly, or even monthly. But, as observed in a preceding chapter, in the case of premiums paid otherwise than annually, the insurance company loses some interest and, therefore, a slight addition is made to such premiums. The quarterly premium, for instance, is not exactly $\frac{1}{4}$th of the annual premium but slightly more than that.

A Specimen of the Premium Table of The Empire of India Life Assurance Company Limited

TABLE III. Civil Rates.

ENDOWMENT ASSURANCES—WITH PROFITS.

Annual Premiums to Assure Rs. 1,000 (With Profits) payable at Death or at the end of a Fixed Number of Years.

Age next Birthday.	Sum Assured payable at Death or at end of					
	1[illegible] years. Rs. a.	15 years. Rs. a.	20 years. Rs. a.	25 years. Rs. a.	30 years. Rs. a.	35 years. Rs. a.
20	103 3	66 7	48 10	38 3	31 10	27 13
21	103 5	66 10	48 13	38 7	31 14	28 2
22	103 7	66 13	49 0	38 11	32 3	28 8
23	103 10	67 0	49 4	38 15	32 8	28 14
24	103 13	67 3	49 8	39 3	32 13	29 5
25	104 0	67 6	49 12	39 8	33 3	29 12
26	104 3	67 10	50 0	39 13	33 9	30 4
27	104 6	67 14	50 5	40 3	34 0	30 12
28	104 9	68 2	50 10	40 9	34 8	31 5
29	104 12	68 6	50 15	41 0	35 0	31 14
30	105 0	68 11	51 4	41 7	35 8	32 8
31	105 4	69 0	51 10	41 14	36 1	
32	105 8	69 5	52 0	42 6	36 11	
33	105 12	69 11	52 7	42 15	37 5	
34	106 1	70 1	52 15	43 8	38 0	
35	106 6	70 7	53 7	44 2	38 12	
36	106 12	70 14	54 0	44 13		
37	107 2	71 5	54 10	45 9		
38	107 8	71 13	55 5	46 6		
39	107 15	72 6	56 1	47 4		
40	108 6	73 0	56 13	48 4		
41	108 14	73 11	57 10			
42	109 7	74 7	58 9			
43	110 1	75 4	59 9			
44	110 12	76 2	60 11			
45	111 8	77 1	61 15			
46	112 5	78 2				
47	113 4	79 5				
48	114 4	80 10				
49	115 5	82 0				
50	116 7	83 8				
51	117 11					
52	119 2					
53	120 12					
54	122 8					
55	124 6					

EXAMPLE.

A Civilian in his 25th year may secure a Policy for Rs. 10,000 (With Profits), payable at Death or at the end of 25 years by payment of a Yearly Premium, limited to 25 years, of Rs. 395-0.

Premiums may be paid by Half-Yearly, Quarterly or Monthly Instalments, as desired.

Natural Premium and Level Premium.

Premiums are charged on two plans, *viz.*, Natural Premium Plan and Level Premium Plan. Of these two, the second is more important and popular.

Natural Premium Plan.—The natural premium is based directly on the mortality rate and goes on increasing along with a rise in the mortality rate. If a man takes policy on the natural premium plan, the premium that he would have to pay each year would go on increasing regularly and steadily. The reason is not far to seek. With the passage of time, the number of deaths goes on increasing, taking of course one particular group of the insured into consideraton. With the increase in the number of deaths the total amount that the insurance company has to pay out in the form of death claims also increases. And as the total amount has to be found by the survivors, the amount each survivor has to pay, that is the premium, goes on increasing. The natural premium of any particular year is roughly found out by the following formula:

$$\text{NATURAL PREMIUM} = \frac{\text{No. of deaths x Insured amount}}{\text{No of survivors}}$$

Level Premium Plan.—The natural premium plan is defective in the respect that the amount of the premium goes on increasing as years roll by, so that in the old age of the insured the burden of premiums becomes extremely heavy. This is a very great draw back which has made this plan extremely unpopular. Its place has been taken by the level premium plan according to which *the same amount is charged as premium year*

after year. In the earlier years of the existence of the policy a larger premium is charged under this plan than the actual yearly cost of insurance; while in later years, when the insured grows old, less than actual yearly cost is charged. The excess amounts charged during the earlier years are utilised to supplement the premiums paid in later years so as to equal them to the actual cost.*

This excess charge goes on accumulating up to a certain stage and forms a *fund.* Thereafter, when the level premium falls short of the actual cost, the fund begins to be drained out slowly and gradually. This fund, however, remains with the insurance company for a long time and is invested by it in good interest-bearing channels. The question of the investment of the fund gives rise to great financial problems.

Factors Governing Premium Rate.

Premium is nothing but the selling price of insurance protection and this selling price is equal to cost of insurance *plus* profit. The cost contains two important elements, *viz.*, policy claims arising either through death or maturity of the policy, and the expenses of management and profits.

Of these the first is more important than the second. These factors must naturally play an important part in the determination of the premium rate.

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* See A. N. Agarwala, *Insurance Finance.*

There is also a third factor which must also be taken into account. This is the rate of interest. The insurance company secures its cost through two sources, namely, premiums and interest on investments. What has to be collected in the shape of premiums, will basically depend on the rate of interest earned on the investment of the fund. If larger interest can be earned, premiums can be correspondingly reduced; while if the interest rate is low, the premium rate will correspondingly increase.

Gross and Net Premiums.

The factors of policy claims and interest cover the net premium. The net premium is the one which is just sufficient to meet all the policy claims arising either through death or through maturity of policies, provided that the actual mortality rates coincide with the assumed mortality rates, that all the money is invested as soon as it is received and that the assumed rate of interest is realised. The net premium rate will not leave anything to meet the expenses, for distribution as profits or bonuses or for contingency fund.

The actual premium rate that must be realised should be sufficient to meet the foregoing requirements as well. It means that something must be added to the net premium to meet expenses, to show profits and to create a contingency fund. This addition to the net premium rate is known as "loading". The premium rate thus arrived at is known as the 'Gross Premium Rate'. This is the actual premium rate that is charged

and it is also called the 'office premium'. The loading in the case of participating policy is heavier than that on non-participating policy on the ground that whatever is paid by the insured in the first case is partly returned to him in the shape of bonus.

The following management expenses have to be added to the net premium in order to arrive at the office premium:

1. *Initial Expenses*:
   (a) Medical examiantion fee;
   (b) Policy stamp;
   (c) Procuration commission (Agent's commission); and
   (d) Office expenses in connection with the issue of policy and the making of report.

2. *Recurring Expenses*
   (a) Renewal commission;
   (b) Office expenses in connection with the issue of premium notices etc.

In the case of with-profit policies, there is an additional loading for profit.

Calculation of Net and Gross Premiums.

The calculation of net and gross premiums is a very delicate task which is performed by experts known as actuaries. Though the actual process is very complicated and mathematical, we may point out its salient features.

The first thing that is done is the calculation of Net Premium. This is easily done on the basis of the mortality tables which help actuaries to find out the total sums that would have to be paid off as death claims in respect of the members of a group. From this is deducted the interest that the insurance company might be able to earn on the investment of its fund. This is distributed among the members of the group equitably so as to arrive at the Net Premium.

To the Net Premium are then added the various charges as pointed out above. The actual weight that should be given to these items in "loading" is contained in a formula given by Dr. Sprague which is known as *Sprague's Formula*. This formula states that in order to arrive at the Office Premium, the following additions should be made to the Net Premium:

(1) 1% on the assured sum to cover procuration commission;

(2) 7½% on the premium each year to cover renewal commission, and;

(3) 2s. 6d. % on the sum assured each year to cover management expenses.

Thus, for an insurance of £100, the formula may be thus written:—

OFFICE PREMIUM=

$$1.075\left(\text{Net Premium} + \frac{\pounds 1}{\text{value of annuity on } \pounds 1 \text{ on the life}} + 2s.\ 6d.\right)$$

CHAPTER 8

POLICY CONDITIONS

A life insurance policy represents a contract entered into by the insurer and the insured. It is governed by the terms and conditions agreed upon between both these parties. These conditions are printed on the back of the policy; hence the expression, *policy conditions.* They are also to be found in the prospectuses issued by insurance companies.

We give below an exhaustive discussion of the policy conditions usually common in our country.

Premium Rates.

The rates of premiums in the Prospectus issued by an insurance company usually apply to the first class male lives of the ages specified under each table, not engaged in hazardous occupation and who do not belong to Military or Naval Service or the Air Force. Subnormal male lives, male lives engaged in hazardous occupations and female lives are accepted at enhanced rates of premium.

Female Lives.

In India, an insurance office is generally prepared to entertain on special terms a few proposals for insurance on the lives of healthy and literate females who maintain themselves and their dependents by their own

earnings, *e.g.*, teachers, nurses or women engaged in commercial pursuits, etc., provided the age of the assured is over 25 and under 50. The rules of one company slightly vary from those of the other in this matter.

Ladies in any stage of pregnancy or who observe *purdah*, whether complete or partial, are not accepted. Lady applicants are examined as far as possible by lady doctors only.

Hazardous Employment.

In the event of the life assured entering upon a service or employment or occupation which is materially different from that in which he was engaged at the date of the commencement of the risk under a policy, he is required to at once inform the office of such change, and, if the office considers the service or employment or occupation to be hazardous, he may, while so employed or engaged, be required to pay an increased rate of premium to be fixed by the office.

The occupations of the following people are considered hazardous and are subject to extra charges: aviators, employees in ammunition factories and collieries doing underground work, electricians, fire brigade men, toddy-drawers, railway drivers, firemen, etc. etc.

Naval and Military Service.

Policies are granted on the lives of men engaged in naval and military service during times of peace and

when there is no immediate prospect of war, at an extra premium which is quoted on application and which is payable till the life assured retires permanently from the service. Such policies cover naval and military risks of every kind.

War Risk.—When a policy is effected at ordinary rate, *i.e.,* without an extra premium for War Risk, the life assured is required to intimate to the company before engaging in active service or proceeding to a country engaged in war (whether war be declared or not) and to pay such extra premium as may be determined by the office, failing which the liability of the company terminates except to the extent of the surrender value, if any.

Aviation.—Without payment of extra premium on that behalf a policy does not usually cover the aviation risk except that arising from travelling as a passenger in a recognised passenger air-liner operating on a recognised and popular route. In the event of the death of the assured from any cause whatsoever resulting directly or indirectly from his participating in aviation except as a passenger as stated above, the policy becomes void except to the extent of the surrender value of the policy unless the previous permission of the company has been obtained before engaging in aviation and such extra premium as the office may fix has been paid.

Payment of Premiums.

Premiums are payable yearly in advance, but to suit the convenience of the assured, every office accepts

payments by half-yearly, quarterly or monthly instalments.

There is a growing tendency to fix the half-yearly instalment at one-half and the quarterly instalment at one-quarter of the annual premium. The monthly instalment is one-twelfth of the annual premium, increased by one anna per rupee.

When calculating the premiums, or instalments thereof, fractions of an anna are taken as one anna.

Commencement of Risk.

Ordinarily the risk under policies commences on the date of receipt of the first premium in full, or from the date of the company's acceptance letter, whichever is later.

If the letter of acceptance is issued subject to any conditions, the company's risk will commence after the fulfilment of such conditions. The policies may, however, be dated back to enable the policyholders to get the benefit of the lower age premium.

Days of Grace.

A period of one calendar month or of thirty days, whichever is greater, is allowed as days of grace for the payment of each premium or instalment of premium if payable yearly or by half-yearly or quarterly instalments and a period of fifteen days if payable by monthly instalments. When the days of grace expire on a Sunday or Holiday under the Negotiable Instruments Act, XXXVI of 1881, the premiums may be paid on the

business day following the holiday. If the premium or instalment of premium be not paid within the days of grace, the policy shall (subject to the provision contained in the policy) lapse and be void. But in the event of the death of the assured during the days of grace and before payment of the premium, the policy shall not lapse, but the un-paid premium shall be deducted from the sum assured.

The insurance company does not hold itself responsible for any delay in remittance caused through the Post Office or otherwise and the insured should, therefore, remit their premia on due date and not delay till the grace days are over.

Generally, notices of premiums falling due are regularly sent to the policyholders but the company is not bound to give any such notice and the non-receipt of the same will not be admitted as an excuse for non-payment or late payment of premiums. No such notices are necessarily sent to policyholders paying premiums in monthly instalments.

Policies World-wide.

All policies issued by the offices are now usually without any restriction as to travel or residence of the assured in any part of the world in time of peace. Policyholders proceeding to Europe or any other part of the world considered equally healthy are entitled, during their residence there, to a rebate of 10 per cent in their premium from the 9th day of their leaving any Indian Port by steamer or from the 4th day of

their leaving any Indian Air Port by plane, until the last 9th day of their return to any Indian Port by steamer or the last 4th day to any Indian Air Port by plane.

Indisputability of Policy.

All policies issued by Indian offices are indisputable in terms of Section 45 of the Insurance Act, 1938, which is reproduced below:

"No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance, or in any report of a medical officer, or referee, or friend of the insured or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter and fraudulently made by the policyholder and that the policyholder knew at the time of making it that the statement was false."

Medical Fee and Policy Stamps.

Medical fee for examination of applicants and stamp duty on policies are payable by the insurance company in all cases, provided that if once the proposal is accepted as proposed and the proponent fails to pay

the first premium he shall be liable to pay the preliminary expenses incurred by the company.

Alteration in Policies.

An assured is allowed, subject to the production of such evidence as to health and title or otherwise as the company may require, to obtain in lieu of his original assurance, policy of any other type for the time being granted by the office on payment of a certain fee and any stamp duty that may be payable, and the difference of premium with interest at a certain rate per cent per annum compounded half-yearly thereon from the date of his original policy till payment. The company, however, has full powers to decline the alteration without assigning any reason.

Additional Assurance.

If within three months of the acceptance of the proposal the insured desires to increase the amount of assurance, he is generally permitted to do so, without fresh medical examination, on production of evidence of good health to the satisfaction of the company and a new policy is issued for the increased insurance. An application for increasing the sum after the expiry of three months is treated as a new proposal requiring a fresh medical examination.

Lost Policies.

The loss of a policy should be immediately intimated to the insurance office, with full particulars as to how the policy was lost or destroyed and the steps taken to

trace the same. The office will be prepared to issue a certified copy of the policy on payment of Rupee 1 and after due advertisements of such loss or destruction at the insured's cost. In addition, a Bond of Indemnity may be necessary..

Suicide.

Suicide committed by the insured, whether sane or insance, within twelve months from the date of issue of the policy will render the policy void and all the premiums paid will be forfeited to the office. Some offices keep this period at two years. Suicide after that does not interfere with the establishment of a claim.

Assignments and Nominations.

Policyholders are generally advised to assign their policies during their lifetime or to nominate the person or persons to whom the policy moneys are to be paid in the event of their death.

Policies may be assigned by the policyholder by way of gift or for valuable consideration.

An assignment introducing any special features or conditions involving any alteration of the printed form should be made only on competent legal advice and after due consideraiton of all the circumstances.

If the assignee or nominee be a minor, it is advisable to appoint a testamentary guardian in respect of his property. Such an appointment can only be made by the assignee's or nominee's father or by a Court of Law. Only the Court can appoint a guardian in respect of the property of a minor married girl.

The assignment must be written on the reverse of the policy or made by a separate deed duly stamped, dated and signed by the assignor in the presence of at least one witness. An assignment otherwise complete and effectual is inoperative against the office until notice of assignment is delivered to it and must be accompanied by the policy bearing the assignment or where the assignment is executed otherwise, by the deed of assignment or a copy of the assignment, certified as to its correctness by the assignor and the asignee or their duly authorised agent and by a copy of the assignment.

The priority of claims under assignments will be governed by the order in which notices are received by the insurance company. Rupee one has to be sent with every policy bearing an assignment in favour of a person other than the husband, wife or children of an insured as fee for acknowledgment of the notice.

The holder of a policy of life insurance on his own life (not being an absolute assignee of the benefit of the policy) may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. Where the proponent supplies the name of an intended nominee or nominees in the proposal, the company will incorporate the name or names of such nominee in the text of the policy itself. A nomination, if not incorporated in the policy itself, can be made only by an endorsement on the policy. In order to be effective, this must be communicated to the office and recorded in its books.

A nomination may, at any time before the policy matures for payment, be cancelled or changed by the insured by an endorsement or a further endorsement or a Will, as the case may be. The company shall not be liable for payment under the policy made *bona fide* by it to a nominee mentioned in the text of the policy or to the one nominated by an endorsement on the policy registered in the records of the company, unless a notice in writing of any such cancellation or change has been received by the company at its head office. A fee of Rupee one is generally charged for each nomination subsequent to the first nomination. A transfer or assignment of a policy automatically cancels a nomination. A nomination does not ensure the same protection against creditors as an assignment ordinarily does.

The company assumes no responsibility whatsoever as to the validity or otherwise of any such assignment or nomination, it being the duty of the policyholder to satisfy himself as to the form of assignment or nomination, amount of stamp duty and all other points relating thereto before notifying the same to the company for registration.

Settlement of Claims.

Claims are paid immediately after the receipt of proof, to the satisfaction of the company, of the death of the insured and of the title of the claimant. Every consideration is shown in dealing with widows and relations of deceased members and all possible facilties are given to ensure a prompt settlement.

Proof of death will be required as under:

Form I Application by the claimant.

Form II Certificate from the doctor who attended the deceased in his last illness.

Form III Certificate of burial, cremation, etc., to be filled up and signed by any well-known and competent person present at the funeral and to be forwarded along with an extract from the Death Register or other public record.

Form IV Certificate of identity to be filled up by some respectable person who was well acquainted with the deceased and who has seen the dead body of the deceased.

Proof of the title of the claimants to the policy moneys is required in all cases where a policy has not been assigned, or a nominee has not been appointed by the life insured during his illness and may be any of the following:—

(1) *In the Presidency Towns*:

Probate of Will from the High Court, if a will has been left; or,

Letters of Administration from the High Court, if no Will has been left; or,

Where the total amount of the Estate left by the deceased does not exceed Rs. 2,000, a Certificate of Title from the Administrator General which is very easily obtained.

(2) *In the Districts*:

Succession Certificate, whether or not a Will has been left, from the Court of the District Judge having jurisdiction where the deceased resided, or an Administrator General's Certificate as above mentioned.

(3) Whenever a Succession Certificate or Letters of Administration or a Probate of a Will is granted by a court situated outside British India, *i.e.*, in a foreign country or in an Indian Native State, such a Certificate of Title is required to be exemplified by a Political Agent or a Resident or any other accredited representative of the Government of British India residing in such a Foreign country or Indian Native State and having authority to exemplify such certificate of title.

(4) Such other proof that the company may demand.

In terms of Section 47 of the Insurance Act of 1938, if in the opinion of the company it is impossible to obtain a satisfactory discharge by reason of conflicting claims or insufficiency of proof of title or for any other adequate reason, the company is required to apply to pay into court the moneys due under a policy. Such payment into court has to be made within nine months from the date of the maturity of the policy or from the date of the intimation of the death, as the case may be.

Once the policy-moneys are paid into court, it will be for the claimants to apply to the court in order to obtain the amount due to them. It is, therefore, very

desirable that the claimants should make every effort to prove their claim and title as early as possible, so that it may not become necessary for the company to pay the policy-moneys into court.

Surrender and Non-forfeiture.

Conditions relating to surrender, non-forfeiture, etc., which involve certain technicalities, have been discussed in the next chapter.

Premium Rates
Female Lives
Hazardous Employment
Naval & Military service
Payment of Premiums
Commencement of Risk
Days of Grace
Policy Worldwide
✓ Indisputability of Policy
Medical Fee & Policy Stamp
Alteration in Policy
Additional Assurances.
Lost Policies.
Suicide
Assignment & Nomination
Settlement of Claims
Surrender & Non-forfeiture.

CHAPTER 9

SURRENDER, NON-FORFEITURE, ETC.

Life insurance contract has the peculiarity that while the insurance company cannot back out of it, the insured can discontinue it whenever he likes by stopping the payment of premiums when due. Policyholders do not, however, discontinue insurance because they think it desirable to do so, but usually this is the result of their adverse financial position. Insurance companies always try to help the insured to keep the policy alive and provide many helpful ways for encouraging them to continue insurance.

Revival of Lapsed Policy.

If premium is not paid within the days of grace, the policy ordinarily lapses. If, however, the policy is guarded by an automatic non-forfeiture clause, it thus lapses only if it has not acquired surrender value. A lapsed policy is generally permited to be revived at any time during the lifetime of the insured on payment of the outstanding premiums with interest thereon at fixed rate of interest per annum calculated from the due date of the un-paid premiums. Evidence of good health and eligibility to the satisfaction of the insurance company have also to be produced.

Generally no medical examination is necessary if the policy is revived within six months or so from the date of lapse, but the insurance company requires a

declaration by the insured of his continued good health and eligibility on a printed form supplied by the company. If the policy is revived after this period, full medical examination is found necessary and the costs of medical examination for revival are to be borne by the insured. It is, however, at the option of the insurance company to decline to revive a policy without giving any reasons.

Surrender Value.

If the insured finds it impossible to continue paying premiums on a policy, he can surrender it to the insurance company and acquire what is known as 'surrender value.' Since the initial expenses incurred by the insurance company when accepting a new proposal are recouped in about two years, it is generally provided that surrender value will be acquired only after the policy has been in force for at least two years. In some cases, the period is fixed at three years.

The basis of the surrender value is the fund that accumulates out of the premiums already paid by the insured up-to-date. This fund belongs to the policyholder and the insurance company merely holds it in trust for him. Each individual policyholder, thus, has his share in the general fund to the limit of a certain amount at any particular time. The share of the general fund which thus belongs to an individual policyholder at any particular time is known as the *fund value* of his policy at that time. The fund value of a policy goes on incresing with the duration of insurance.

This fund value enables the insurance company to pay to the insured the surrender value.

But it must not be understood that the insurance company can afford to pay the entire fund value to the insured in case he surrenders his policy. The reasons are not far to seek. The policy thus surrendered may be in respect of a very healthy life in which case the insurance company will be left with indifferent or unhealthy lives. Their mortality statistics will register high figures thus tipping the balance against the insurance company. Moreover, since the insurance company has already borne a certain amount of risk and incurred certain management expenses for the benefit of the insured, it is only proper that a share of the fund value should be kept by it as remuneration for this.

The effect of withdrawal of a member from the insurance group was once thus described by the President of an American Life Office: "The effect of withdrawals is in three directions: they reduce numbers, thus narrowing the basis for averages, increasing the range of fluctuation, intensifying its effect, and prejudicing steadiness of operation; they presumably take out not only unimpaired lives, but the best lives at least those having the strongest unconscious instinct of an enduring vitality; while this may not be and is not always the case under ordinary conditions inviting continued confidence, it would be unsafe to predicate any treatment of them upon any other assumption which there is no after opportunity of rectifying, an assumption which would be realised to an appalling degree

under conditions which impaired confidence in corporate integrity; and, thirdly, surrenders for cash interfere and may conceivably very seriously interfere, with that employment of the funds of the membership which is of the essence of financial stability and a most important factor in the reduction of current cost to continuing members."

The surrender value is generally expressed as a percentage of the premiums paid. Generally, 25 per cent to 30 per cent of the premiums paid up-to-date are given as surrender value in the case of without-profit policies and about 40 per cent in respect of with-profit policies. Generally, in calculating these percentages, first year's premium is not taken into account.

Some forms of policies, however, do not entitle their holders to any surrender value whatsoever. For instance, in temporary or term insurance and reduced premium insurance, no surrender value is given as the fund value is almost negligible. Pure endowment policies without return and annuities not providing for any return of consideration money are other examples.

When paying the surrender value, any loan or premiums advanced under non-forfeiture clause with accumulated interest and all claims and charges which the insurance company may have upon the insurance policy are deducted.

Automatic Non-Forfeiture.

Most of the progressive life assurance offices now include an automatic non-forfeiture clause in their

policies. This clause guards against the lapse of policy due to the stoppage of premium payment in proper time. It provides that if a policy is two or three years' old and has a surrender value, then this surrender value, together with any bonuses, will be applied automatically towards the payment of premiums when due. The insured need not even advise the company to do so. This will be done by the insurance company of its own accord. When, however, the whole surrender value is thus spent up and the policy is not in the meanwhile revived by the payment of premiums due, the policy will lapse, subject to the revival of lapsed policies clause.

If the insured dies or the event on the happening of which the policy will become a claim takes place during the period when the policy is kept in being by the operation of this clause, the assured amount becomes payable in full after the deduction of advances made and the interest thereon calculated at a moderate rate of interest.

Automatic non-fortfeiture may be limited or unlimited. If the policy permits the revival any time during the non-forfeiture period, by payment of the arrears, it is called *unlimited non-forfeiture*. If, on the other hand, a definite time has been fixed during which the insured must pay up the arrears and revive the policy, irrespective of the exhaustion of the surrender value, the arrangement is called *limited non-forfeiture*.

Paid-up Policies.

To the policyholder who cannot continue the pay-

ment of further premiums, another course that is open is to have his policy paid-up. This option can, however, be exercised only after the policy has been in force and premiums have been paid for two years or more. The policy becomes proportionately paid-up, *i.e.*, the insured amount of the policy is reduced to such a proportionate part of the sum assured as the number of full annual premiums paid bears to the total number of premiums payable under the original policy. This amount to which the policy is thus reduced is known as the *paid-up value of the policy*.

The limitations of paid-up policies should be clearly understood. Firstly, a policy can become paid-up only after it has been in existence for two or three years. Secondly, only those policies can, strictly speaking, be made paid-up in which case the total number of premiums to be paid by the insured is fixed in advance. In other words, this privilege is applicable only to endowment policies and whole-life policies with limited payments. The insurance offices, however, have begun to allow this privilege also to whole-life policyholders of ordinary variety. A clause like the following is generally found in the prospectuses of insurance companies:

> "Paid-up policies in the case of whole-life assurances where premiums are payable throughout the life and in case of convertible whole-life policies, both before and after conversion, will also be granted provided they have been in force for at least

two years. The amount of paid-up policies will be quoted on application."

Thirdly, the amount becomes available when the policy becomes a claim under the original terms and conditions. Some paid-up policies are made to participate in the future profits while others are not. But in any case, the bonuses that have already accrued up-to-date remain attached to it.

Automatic non-forfeiture is sometimes worked up along with this alternative as well. In this case, instead of the policy lapsing when the payment of further premium ceases, the policy automatically becomes paid-up. In other cases, however, this automatic arrangement is not preferred and this privilege is given to the insured only when proper notice is received from him to this effect.

CHAPTER 10

PROFITS AND BONUS

Valuation.

We have seen that most of the business these days is conducted on the level premium plan. Under this plan a sum larger than the cost of insurance is collected in the earlier years so that it can be drawn upon in later years when the premium will be less than the cost. A fund accumulates with the insurance company which it keeps in trust for the insured. This fund must be adequate; and its adequacy is the touchstone of judging the financial stability of the concern. If the insurance company, draws upon this fund and dissipates it uselessly, the company will find at the time of meeting liabilities that it has not the money to honour its obligations:

With a view to examine the adequacy of the fund, therefore, a periodical review of the financial standing of the company is necessary. In India, the law compels every insurance company to hold such an examination at least every fifth year while option is given to it to hold such an examination even earlier if it so desires.

Such a periodical examination of the company's standing also reveals the profit made or loss incurred by the insurance company. Such periodical examination, serving these two purposes, is called valuation.

Valuation may therefore be defined as a periodical examination of the financial position of an insurance

company meant to judge the adequacy of the insurance fund and to calculate its true profit or loss.

Valuation is a very technical task. It cannot be performed just by anybody. It requires knowledge of statistics, mathematics and insurance and calls for great skill and expert handling. It is thus entrusted to experts known as *actuaries*. According to law, the Indian actuaries who can hold such a valuation are registered with the Superintendent of Insurance and they alone can hold valuations.

Even though valuation is a technical matter, still we can discuss some of its mysteries in a simple manner. In order to judge the financial worth of an insurance company, there are three main factors that have to be taken into account:—

Assets:

1. Fund
2. Premiums to be received in future *Liabilities*.
3. Promised assured sums.

Liabilities under the heading 3 will have to be met in future. The assets out of which they will have to be met will be the fund and the premiums received in future. The assets must be sufficient to meet the liabilities. This is the theory.

The actuary first finds out the present value of future liabilities or insured sums. Then he also finds out the present value of the premiums to be received in future. The first would naturally exceed the second.

He takes out the excess. Now this excess must be there in the shape of the accumulated fund. If it is equal, it means the concern is safe. If it is less than the Fund, then it means that there is a surplus. If it is more, it means that Fund is inadequate and there is a deficiency. The following statement will clarify this position:—

ASSETS	Rs.	LIABILITIES	Rs.
Present value of future premiums.	...	Present value of future assured sums ...	...
Balance—Net Liability ...	...		
Rs		Rs.	
Fund in hand (Deficiency)	... ...	Balance-Net Liability ... (Surplus) ...	... ...
Rs.		Rs.	

Surplus and Profit.

It is thus clear that with a view to make an estimate of the surplus we have to assess the present value of future claims including future management expenses, as well as the present value of the premiums to be received in future on the existing business. By subtracting the latter from the former, is found out a figure at which the insurance fund must appear, if the concern is financially sound. The excess of the insurance fund over this figure represents the surplus.

Suppose the present value of future premiums is y and x is the present value of future claims and man-

agement expenses. The fund must at least be equal to $x-y$. If the fund exceeds $(x-y)$, the excess will be known as *surplus*.

This surplus is first utilised in making provisions against contingencies, fluctuations, etc., such as a prudent insurance office should make. The balance of the suplus is available for distribution as profit.

It is thus clear that whereas surplus is the excess of the amount of the actual fund over the amount at which it should appear according to valuation; the profit is that part of the surplus which remains after due provisions have been made. There cannot be a profit unless there is a surplus. Surplus is the excess of the life insurance fund only over the liabilities in a valuation revenue account, while the profit is the amount that remains of the surplus after proper provisions for all requirements have been duly made.

Sources of Profit.

The following are the sources from which an insurance company receives its profits:—

(1) Mortality Rate;
(2) Interest Rate;
(3) Loading (expenses);
(4) Forfeiture and Surrender; and
(5) Profit Loading.

1. *Profit Arising through Favourable Mortality Rate.*—The actual death rate is generally lower than the assumed death rate. This happens because of the fact

that insurance companies are very particular in keeping a proper safety margin in this rate. In Western countries, an additional factor of safety operates. The mortality tables used by their companies are quite old, though public health has improved and deaths have fallen.

Because deaths in any particular year, are less than the assumed number, the amount scheduled to be paid in any particular year is not entirely spent up—a balance remains which is paid off when the persons to which they relate die in future till the time of death. This amount can be and is invested and certain interest is earned thereon. To this is added the premium that such persons have to pay due to their unexpected survival. Such interest and premium go on increasing at compound interest till the valuation takes place, when it is found that sufficient profit has been made from this source.

2. *Higher Interest Rate.*—Just as insurance companies assume a certain rate of deaths in the calculation of premiums, similarly they assume a certain rate of interest on their investments. This rate is estimated on a conservative basis and is usually less than the actual rate earned. In India, the assumed rate of interest is $3\frac{1}{2}$ to 4 per cent, but the actual rate of interest earned on an average may approximate to 5 per cent. This additional one per cent on premium gives a profit of several lakhs of rupees to all the Indian insurance companies put together. This profit, it should be remembered, is not taken into account the very year it

arises but is allowed to accumulate at compound rate of interest till the valuation.

3. *Loading.*—The insurance companies also assume that a certain amount will be spent as management expenses. But they are always very alert to cut down their expenses and keep them as low to this limit as possible. If somehow the actual expenses cross this limit, the insurance fund will be touched which will be disastrous to the company. Hence the companies make it a point to see that actual expenses are kept below the fixed limit. The saving made in this respect goes on increasing at compound rate of interest till the time of valuation, and goes to swell the profits.

4. *Forfeiture and Surrender.*—Sometimes the insured fails to pay premiums because of an adverse change in his financial position or some other cause. In such a case he sometimes allows the policy to lapse when all the fund accumulated so far in respect of this policy is a clear gain to the company. But usually such a man will surrender his policy and obtain a surrender value. This surrender value, however, is always less than the accumulated fund and the balance is left with the company, which is its profit.

5. *Profit Loading.*—Finally, there is sometimes a profit loading as well which increases profit. This happens in the case of participating policies.

Participants of the Profits.

The persons who are entitled to participate in the profits of an insurance company vary according to the

legal organisation of the company. If it is a mutual company, all the policyholders are its proprietors, so that all the profits is distributed among the policyholders. In a proprietary company, on the other hand, shareholders form a class quite distinct from that of policyholders; and it is the former who claim the entire profits. But such companies have in recent years begun to issue with-profit or participating policies which carry with themselves the right of participation in the profits of the company. In some cases, the share of the profit allotted to participating policyholders is as high as 90 per cent of the total profits.

The premium rate applicable to participating policies exceeds that which applies to non-participating policies. This is mainly due to the bonus loading in the case of the former. It is said by some persons that *what the participating policyholders get back in the shape of bonus is nothing but this extra charge.*

This contention is not quite correct as is shown by the fact that bonuses usually exceed the extra charge. It means that what these policyholders get back is not only the bonus loading collected from them but also something more. What is this something more?

In this connection, it must be remembered that insurance companies have to anticipate mortality rate, interest rate and expenses—a task which they can do, not with perfect accuracy, but with a fair degree of precision. To cover this little element of uncertainty, the premium rate charged is made to exceed slightly the actual rate which would be charged if the forecasts were

perfectly accurate. This extra charge is the *safety margin*.

The non-participating policies do not get back anything out of their contribution to this safety margin, but the participating policyholders get back something out of their contribution for that is an element of the profits in which they share. In addition to this, they also get the contribution to this margin made by the non-participating policyholders as well as the bonus loading paid by them—these two being the other constituents of profit.

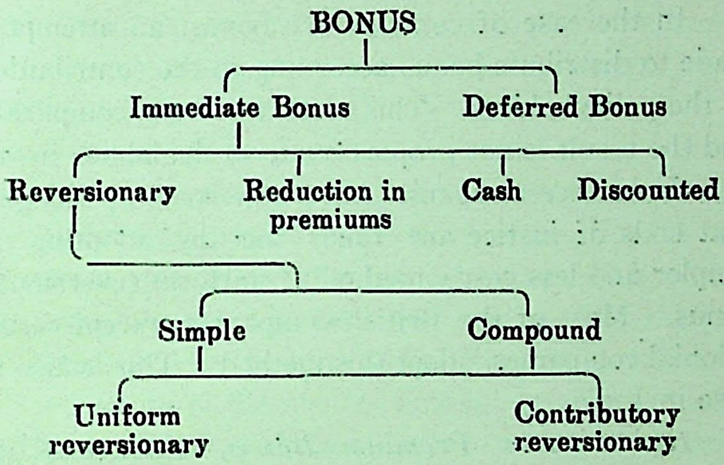
It is because of all these factors, and not to bonus loading alone, that the excess of the bonus over the extra charge in question is to be ascribed.

Bonus.

The share of the profit, which accrues to the policyholder, is known as *bonus*. This bonus is of several varieties.

Simple and Compound Reversionary Bonus.—Very often the bonus paid to policyhoolders is not given to them in the shape of cash but is added up to the insured amount. Such a bonus is known as Reversionary Bonus.

In the case of Simple Reversionary Bonus, the figure on which the bonus is calculated is the original insured amount. In the case of Compound Reversionary Bonus, on the other hand, the bonus is calculated on the insured amount *plus* the total bonuses accrued up-to-date.



(Chart showing Varieties of Bonus)

Uniform and Contributory Reversionary Bonus.—Reversionary bonus may be either contributory or uniform. Each of the two foregoing varieties of reversionary bonus is divisible into uniform and contributory sub-classes. Thus we get (1) simple uniform reversionary bonus and (2) simple contributory reversionary bonus, (3) compound uniform reversionary bonus, and (4) compound contributory reversionary bonus.

A uniform reversionary bonus is that which is paid at a fixed rate per thousand (calculated either on the assured amount or assured amount *plus* bonuses up-to-date, as the case may be) on all policies irrespective of their duration or the rate of premium. This sort of calculation seems to be unjust but really speaking it has actually been proved that a fair degree of justice is done when this type of bonus is adopted; moreover, it has a great advantage of simplicity which makes it intelligible to the general public.

In the case of contributory bonus, an attempt is made to distribute bonus according to the contributions of the policyholders. This method is very complicated and the result is not proportionate to the labour involved. Insurance companies have now come to recognise that ends of justice are fairly met by adopting the simpler and less costly method of uniform reversionary bonus. Most of the British companies, except certain colonial companies, adopt this method. This is also the case in India.

Reduction in Premium Bonus.—Sometimes the bonus is utilised in reducing the premium rate instead of being added up to the insured amount. This is known as Reduction in Premium Bonus. Sometimes interesting cases arise as when the rate of bonuses is so high that the premiums are completely extinguished in course of time. What is to be done in such a case with further bonuses which would accrue? Usually they are then converted into Reversionary Bonuses and are added up to the insured amount.

It should be noted that the older the policy or the greater its duration, the more will be the reduction in the premium rate as a result of the same rate of bonus, other things remaining the same. As the available bonus has to be distributed over the future premiums, the smaller the number of future premiums, the greater will be the share *per capita*.

Cash Bonus.—Another shape in which bonuses may be paid is cash. Some policyholders, indeed, like to have the assured amount fixed at the original level and

to get some cash regularly each year at the same time. A cash bonus usually carries with it the option of a conversion into Reversionary Bonus.

Discounted Bonus.—Sometimes insurance companies anticipate the rate of profit (bonus) and on the basis of this anticipation reduce the premium rate at the very outset. Later on when the actual rate of bonus is found out, relevant adjustments are made. If the actual bonus exceeds the anticipated bonus, the excess is either added up to the insured amount or paid in cash; should it be less than the anticipated bonus in any case, either an extra charge is made or the insured amount is correspondingly reduced.

Deferred or Contingent Bonus.—So far all the instances have been of immediate bonuses. There is also deferred or contingent bonus, the payment of which is postponed till a future date. The payment is made to depend upon certain conditions, *e.g.,* the survival of the insured beyond the expected average period or the accumulation of premiums equal to the insured amount. It is only when this condition is satisfied that bonuses begin to be paid. Those who die without the satisfaction of this condition do not get any bonus.

A deferred bonus is also known as contingent bonus because, though it becomes payable only at a future date, it is provided for and remains a contingent charge till the satisfaction of the stipulated condition. It is only when the condition is satisfied that a contigent charge becomes a certain liability.

CHAPTER II

ANNUITIES

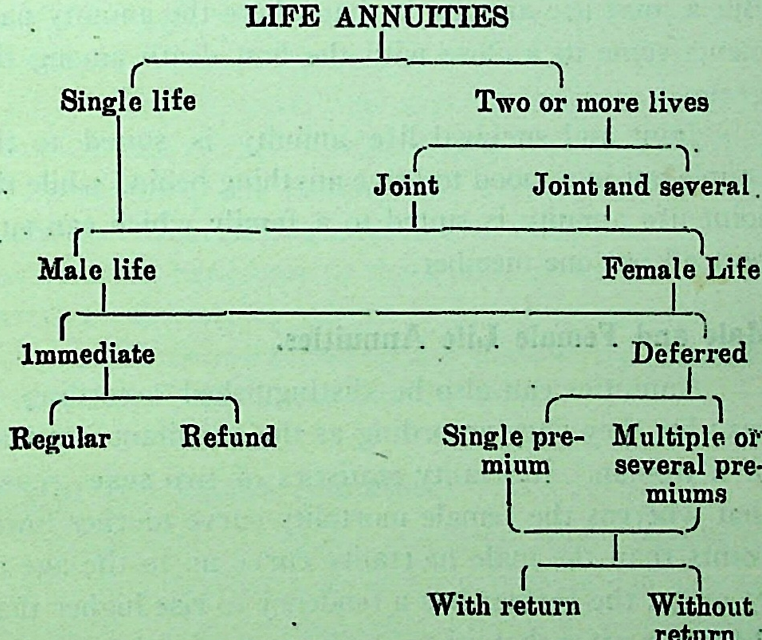
Life insurance companies are also usually engaged in the sale of annuities. An annuity, according to dictionary, means an annual payment. Technically, annuity means the payment of a certain periodical sum over a certain "status." This status usually is the duration of a single life. The periodical payment is generally annual though it may be semi-annual or even monthly. An annuity can be purchased by paying a lump sum in advance.

Usually an annuity is an annual payment made to the annuitant during his life, but the period of payment may not always be annual nor should the status need necessarily be the duration of the life.

Annuity is generally purchased by persons who have a certain amount of money and who do not want to leave anything after their death. It is difficult for them to find out the actual sum by spending which each month or year they might just exhaust their money at the time of their departure from this world. If left to themselves they might spend more than what they should and might have to lead a life of poverty later in life. On the other hand, they might spend the money so slowly that they might have a large sum behind them, thus having lived less comfortably than what they could. Their difficulty can be solved if they purchase an annuity

from an insurance company, thus getting an assurance that they would get a certain sum of money periodically so long as they live.

An annuity is just the reverse of insurance. In the latter (whole-life policy), premiums have to be paid annually so long as one lives, the insured amount becoming payable after death. In the case of annuity, a lump sum has to be paid to the insurance company in the beginning and the insurance company in exchange pays annuities periodically during the life of the annuitant.



(Chart showing Varieties of Annuity)

Single and Joint Life Annuities.

In the case of single life annuity, the status over which the payment is to be made is the single life. So

long as the annuitant lives he receives annuities. The payment stops with his death. This is also known as single annuity, but single life annuity is, of course, a better term.

Sometimes annuities are also taken on the lives of two, or more than two, persons. The commonest provision is that annuities will cease with the death of the last survivor of the group. This is known as joint and survival life annuity. This is generally confused with joint life annuity and is very often called by that name. But a joint life annuity is that where the annuity payments come to a close with the first death among the group.

Joint and survival life annuity is suited to the couple not in a mood to leave anything behind while the joint life annuity is suited to a family which can support all but one member.

Male and Female Life Annuities.

Annuities can also be distinguished according to sex; for they vary according as the annuitant is a man or a woman. Mortality statistics of two sexes reveal that whereas the female mortality curve touches lower points than the male mortality curve up to the age of 25 or 30, the former has a tendency to rise higher than the latter after that stage. This is due to the fact that woman having lived the earlier part of the life in hardihood becomes strong after that age and lives longer. It means that insurance companies will have to pay a larger number of annuities on a female life than on a

male life, other things remaining the same. Hence the same amount will purchase a higher annuity for males and a lower one for females.

Immediate and Deferred Annuities.

Immediate life annuities are given that name because the payment of annuities comes six months after the purchase of annuity. In the case of deferred life annuities, the payment is postponed to a later date. Deferred annuity, therefore, can be purchased either by paying a single premium or the payment of the purchase money may be spread over the period of deferment. In either case, the annuity may be without return or with return. Ordinarily, if the annuitant dies before receiving any annuity, the company is thereby discharged from paying anything whatsoever. But as this involves hardships to the annuitant or his dependants, an alternative system is to return, should the annuitant die before receiving any annuity, the premium or premiums paid till the time of death.

Regular and Refund Annuities.

In the case of regular annuities, they are paid so long as the annuitant lives and comes to an end as soon as he dies. This becomes quite a hardship if the death takes place soon after the purchase of annuity. To meet this point a system of refunding a certain amount has been adopted. This latter type of annuity is, however, known as Refund Annuity.

The two methods of refund are as follows:

1. The minimum number of annuities that must be paid, irrespective of the death of the annuitant, is fixed in such a fashion that he, or his representative after him, receives at least the purchase money. In other words, the amount that must be refunded is the purchase money less annuities paid to the annuitant.

2. It is sometimes provided that if the annuitant dies within limited period, a certain proportion of the purchase money will be returned. Usually in the event of a death taking place within the first five years since the purchase of annuity, half the purchase money becomes payable.

PART III
MARINE INSURANCE

CHAPTER 12

INTRODUCTION

Marine insurance is closely linked with international trade which is mostly sea-borne. In olden times when merchants used to embark upon the risky enterprise of maritime trade, marine insurance made its early appearance. But its importance at that time must be considered to have been rather limited because the keynote of the then economy was self-sufficiency. The international trade was then on a limited scale and marine insurance also shared that characteristic. But during recent times, isolationism has largely disappeared and commercial links connecting the various countries of the world with one another have become stronger than ever before. It has been calculated that oceanic freight now constitutes no less than three-fourths of the total world freight. This is responsible for the great increase in the importance of marine insurance in modern times.

Just as in national trade goods are mostly carried by overland routes, so in international commerce they are generally transported overseas. Goods sent by land have called into existence the railway and postal insurance schemes; but as the risk involved in the case of goods sent by overland routes is not serious, these insurance systems are used only in the case of very valuable or delicate goods. As against this, so many and

so serious are the risks of loss or damage to which goods sent by sea are subject that they are invariably protected by marine insurance policies.

The risks to which goods sent by sea are liable are almost numerous. The ship-owner is liable for some of these risks under the terms of the Contract of Afreightment which may be either a Bill of Lading or a Charter Party. But there is a large number of other risks for which he cannot be held responsible and which are mentioned in the "Excepted Perils Clause" of the Bill of Lading or the Charter Party. A marine insurance policy is purchased with a view to obtain protection against the risks which are included in this clause. The more important losses contained in the excepted perils clause and included in a marine insurance policy are those which are the results of an Act of God or King's enemies, arrests and restraints by rulers, princes and people, fire, gales and other dangers of navigation.

A fine distinction must be made between the risks covered by the contract of carriage and those covered by the marine insurance policy. The insurance policy covers precisely those risks which are excepted in the Contract of Afreightment. The liability of the insurance company begins just where the responsibility of the shipping company ceases; the two do not overlap.

We may define a contract of marine insurance as a contract of idemnity whereby the insurer undertakes to indemnify the insured in a manner and to the extent thereby agreed against the loss caused in connection with a marine adventure.

The scope of a marine insurance policy has been subject to some dispute, but the position is now, more or less, clear. A marine policy primarily covers the loss imposed by some maritime peril. It is also very often made to include the losses to which goods are exposed during their inland, water-borne or land-borne, route which may be incidental to sea voyage. For instance, goods sent from Allahabad to London *via* Bombay may be insured by a marine policy directly from Allahabad to London, covering land risk from Allahabad to Bombay and sea risk from Bombay to London. Some time ago it was debated as to whether this land journey can be a part of marine policy or not, but legal opinion has now expressed itself definitely that it is so. Not only this; in several cases the scope of the marine policy is extended still further. For instance, in what are known as 'Block Policies,' so common in African gold-mining area, risks are covered from the time the gold is dug out to the time of its arrival at destination.

A marine insurance policy is very often defined as a contract of indemnity whereby the insurer undertakes to indemnify the insured against "perils of the sea." We have shown above that the perils of the sea need not be the only risks covered by a marine policy; consequently this definition seems to be narrow. Templeman has improved upon this definition by suggesting that as some of the perils insured against are not sea risks at all, as when a marine insurance policy covers some land risks incidental to the

voyage, it is better to call these perils by a broader description, *viz.*, perils insured against. But this seems to widen the scope of a marine insurance policy too much. It would, in our opinion, be better to describe these perils as "perils insured against in connection with a marine adventure." We have given the above definition in this way.

It should be remembered that a marine insurance contract is a contract of indemnity. In this particular respect, a marine insurance contract is akin to a fire insurance contract. But while both these contracts are contracts of indemnity, the interpretation of indemnity is not exactly similar in these two cases. In the case of fire insurance the indemnity is limited to the actual loss that is borne: more than the actual loss cannot legally be claimed from a fire insurance company. In a marine policy, however, the indemnity is calculated on the basis of the value of the goods agreed upon when the policy is taken which value may exceed or fall short of the actual value of goods exposed to marine risks.

The Subject-Matters of Marine Insurance.

The properties which are exposed to marine losses when some cargo is shipped are three in number: goods, ship and freight.

Cargo Insurance.—Goods sent by ship are known as cargo. The dangers of damage or destruction to which cargo is liable have already been indicated above. A marine insurance policy protects the cargo against

these dangers. Marine insurance of goods is known as Cargo Insurance.

Hull Insurance.—A ship while afloat may also be damaged or destroyed due to a variety of causes. Many of them are the same to which cargo is exposed. Act of God, arrest or restraint by King's enemies, gales, barratry, springing a leak, collision, etc. are the dangers which may cause severe injury to a vessel. As a ship is very costly, it is usual for her owner to purchase a marine insurance policy to cover the various risks to which she is liable. The insurance of ships is known as Hull Insurance.

Freight Insurance.—Besides cargo insurance and hull insurance, a policy is often purchased to protect freight. Freight may be paid either in advance or on the arrival of the ship at the port of destination. In case the freight is paid in advance, the cargo owner would bear its loss if the goods are destroyed while on sea; consequently he usually obtains insurance for the amount of freight by adding it to the value of goods. In case it is payable at the port of destination, the ship-owner would be entitled to realise it only if the goods arrive safely at the port of destination. In case the cargo does not reach the destination on account of its being lost on the way, the shipping company would lose the freight. To protect itself against such a loss of freight, the shipping company purchases a marine insurance policy. Insurance of freight is known as Freight Insurance.

CHAPTER 13

MARINE INSURANCE CONTRACT

Marine insurance contracts are governed by the Indian Contract Act and should possess all the essentials required under the provisions of that Act. Offer and acceptance, legal object and legal consideration, etc., are, therefore, indispensable ingredients of a valid marine insurance contract. Besides these essentials, such a contract must also possess two additional features which are necessary for making any insurance contract enforceable at law, *viz.*, existence of insurable interest and the maintenance of absolute good faith. Further, seaworthiness, legality of the venture and non-deviation are three special requirements of a valid marine insurance contract. These three additional essentials are known as *Implied Warranties*. We will discuss these essentials below.

Insurable Interest.

The insured must have insurable interest in the subject-matter of marine insurance. This is a requirement of every insurance contract and marine insurance is no exception to it. A person is said to have an insurable interest in a particular subject-matter when he stands in such a relationship to it that he will profit by the safety or due arrival of the subject-matter and be

prejudiced by its destruction or damage. It is only when a man stands in such a pecuniary relationship that he is said to have insurable interest; and it is only then that he is entitled to obtain a marine insurance policy in respect of the subject-matter. If a person obtains a policy in respect of certain property without having any insurable interest therein, the contract will be regarded as a wagering contract which is void at law. The insured must necessarily have insurable interest in the subject-matter when the loss takes place, though he may have no such interest at the time when he takes out the policy. Specifically speaking the following persons have insurable interest in a subject-matter of marine insurance:

1. A cargo-owner has insurable interest in the cargo belonging to him.

2. A ship-owner has such interest in his ship.

3. A shipping company which expects to receive freight has insurable interest in the freight thus receivable when the goods arrive at the port of destination.

4. An insurer has sufficient insurable interest in the risk underwritten by him to re-insure it.

5. Captain and crew of a ship have insurable interest in respect of their wages or salaries.

6. Lenders of money on bottomry bonds and respondentia have insurable interest to the extent of their loan.

7. Where the subject-matter insured is mortgaged, the mortgagor has insurable interest in the full value thereof and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

8. Trustees and bailees have insurable interest in the goods entrusted to their care.

Under the English Marine Insurance Act of 1896. a marine insurance policy wthout insurable interest is a void contract and cannot be enforced in a court of law. According to Marine Insurance (Gambling Policies) Act of 1909, such contracts have been definitely prohibited and the offender is liable to six months' imprisonment or a fine of £100, together with the forfeiture of whatever sums he receives in respect thereof. Due to these extremely strict provisions, policies without insurable interest have almost become things of the past. A marine policy issued to a person without insurable interest is known as *Policy Proof of Interest* or P.P.I. The so-called P.P.I. clause, which was once so popular but which has now become an antiquated and abandoned thing, stated that even if the insured does not have an insurable interest in the subject-matter, his claim will stand. The above rigorous enactments have given a death-blow to the P.P.I. and the P.P.I. clause.

Good Faith.

A marine insurance contract being a contract *uberrimmae fidei,* it is necessary for each party to ob-

serve utmost good faith and to disclose all the material facts to the other party. By material facts are meant those facts which are likely to influence the judgment of the other party. If either party fails to observe utmost good faith, the policy is voidable at the option of the party not at fault.

The obligation of full disclosure rests both on the insured as well as on the insurer. This responsibility, however, lies upon the insured with special force because he is the person who knows most about the subject-matter of insurance and who must, therefore, communicate all the material information to the insurer. Lord Mansfield, in his classical judgment in *Carter vs. Boehm,* observed that the underwriter trusts to his (insured's) representation and proceeds upon the confidence that he does not keep back any material information. The keeping back of material facts is fraud and, therefore, the policy is void. But the fact that the responsibility also lies on the shoulders of the insurer or underwriter, must not be ignored. Thus, if the underwriter knew at the time the insurance policy is taken that the ship has reached destination quite safely, which he does not communicate to the insured, he will have to return the premium to the insured.

Concealment by mistake is not excusable, for though the suppression may have been due to some mistake, still the fact remains that the underwriter has been deceived. The risk which he runs is different from the risk which was intended and understood to be run. Similarly, if any party thought that any particular fact

was not material, but it later turns out to be material, it is fatal to the contract.

The insured is exempted, however, from disclosing such information as the underwriter is expected to know. The underwriter is expected to know, for instance, the class to which the ship belongs, the usual route through which the ship passes, the climatic conditions on the way, etc. Such information the underwriter is expected to possess and the insured need not communicate them to him. Every underwriter is also presumed to be acquainted with the usage of the particular trade he insures and if he does not, he ought to inform himself.

If the party not at fault wants to avoid the contract, he must do so within a reasonable time. What is a reasonable time will vary in each case and will be decided by the court. All that can be said is that, to be on the safe side, the contract should be avoided as soon as the fact of non-disclosure comes to one's knowledge.

Implied Warranties.

There are certain warranties which are always implied in a contract of marine insurance and which need not be definitely expressed. Such warranties are called *Implied Warranties*. A warranty is an undertaking on the part of the insured that a particular thing shall or shall not be done in connection with the contract of insurance; or that some conditions shall be fulfilled; or whereby he affirms or negatives the exist-

ence of a particular state of facts. It should be noted that warranties are undertakings *on the part of the insured* and not on the part of the insurer. The insured must comply with the implied warranties strictly. In case the breach of any warranty takes place, the contract becomes void and the underwriter becomes free from his liability from the date of such breach. In the case of an ordinary contract, the breach of warranties only gives rise to a right of damage, but in marine insurance the contract becomes void and unenforceable at law.

The word "warranty" is sometimes used in a loose sense as well. The strictly legal and proper sense of this term should be carefully distinguished from its loose sense in which it is used in business, as when one speaks of the Free of Particular Average *warranty*. The term warranty is stictly speaking incorrect to use here: the correct word is stipulation. By a policy warranted free of capture the insured does not mean to undertake that the ship or cargo shall not be captured—it would be impossible for him to give that sort of undertaking—but he merely stipulates that the policy is not intended to apply to such a case. It is really unfortunate that a legal term having a definite meaning should be employed in business parlance in a different sense; but that is a state of affairs which cannot be changed and must be taken for granted.

Implied warranties should be carefully distinguished from expressed warranties. The latter have to be clearly expressed in order to have effect, while the

former are tacitly implied. The old practice was to consider three warranties, *viz.*, seaworthiness, legality of venture and non-deviation. But now only the first two are considered to be the implied warranties, the third being excluded from the list. But this practice does not have much to recommend itself.

Seaworthiness.

There is the implied warranty that the ship is seaworthy at the port of start and at every subsequent port which she touches and stays at. The ship is said to be seaworthy when she is in a fit condition as to repairs, equipment, crew, etc., to encounter the ordinary perils of the sea in the adventure insured against. Seaworthiness implies not only that the ship herself must be in a good condition as is clear from the term itself, but also that she must be properly equipped, manned, supplied and documented. As the perils of the sea vary according to the voyage undertaken, the standard of fitness to be required of the vessel also varies with the different voyages undertaken. A ship will require greater equipment if she has to undergo a trans-oceanic voyage than if she were to ply along the coast. It has been suggested that the term seaworthiness is a very unsatisfactory term to describe all that is meant to be implied by it and that should be replaced by another term, *viz.*, "fitness."

Legality of the Venture.

The second implied warranty is that the adventure insured is a lawful one and that, so far as the insured

can control the matter, the adventure shall be carried out in a lawful manner. If the adventure is unlawful, the underwriter is discharged from his liability under the terms of the marine insurance policy. If, for instance, the policy is issued in respect of a voyage that is undertaken with a view to smuggle goods and deceive the customs house, the venture would be unlawful. But in case the adventure insured is legal, but the master and crew indulge in smuggling without the knowledge of the ship-owner, it would be a case of barratry and is usually covered by the terms of a marine insurance policy. In times of war, it is illegal to trade with the enemy and if a ship is engaged in this activity under the policy issued to cover the risks attached thereto, the policy will be regarded as void.

Non-Deviation.

The third implied warranty is an undertaking on the part of the insured that the ship will follow the proper course or the course contemplated by the policy. The insured, in other words, promises that the ordinary course of the voyage shall not be departed from. Any departure from such a course is known as deviation.

Deviation is excused in certain cases by law which we shall discuss later on. But if deviation takes place and is not excused by law the underwriter becomes free from his liablity under the policy from the time the deviation takes place.

It has now become usual to exclude non-deviation from the list of implied warranties, though this practice

did not exist some time back. This seems to be the result of the wrong lead given by the English Marine Insurance Act, 1906. Sections 39 and 41 of the said Act mention only two warranties under the heading of implied warranties, *viz.*, seaworthiness and legality of venture. Non-deviaton is treated separately under Section 46. This seems to have led writers on insurance to mention only two implied warranties and to exclude non-deviation from the list. But this practice does not seem to be justified. We shall discuss non-deviaion in detail later while discussing the conditions of a marine insurance policy.

Principle of Indemnity.

A marine insurance contract, as said before, is subject to the principle of indemnity. It simply promises the insured that he will be indemnified in respect of a loss that he suffers through the damage or destruction of the property insured against occasioned by a peril against which cover has been obtained. That is the reason why it is generally defined as a contract of indemnity whereby the insurer undertakes to indemnify the assured against losses incidental to marine adventure or advantures analogous thereto.

The general object of the law which governs marine insurance is that an insured should not be allowed to secure a sum by way of indemnity in excess of the loss actually suffered by him. And in case he recovers more than actual indemnity by means of double insurance, he is regarded to hold the excess amount thus

recovered in trust for the insurers. And in such case, he is also authorised, in some cases at least, to claim the return of a certain part of the premium.

Life insurance is not a contract of indemnity but is a definite undertaking to pay a certain sum of money on the happening of a certain event. This is an important point of destinction between life insurance and marine insurance. Then, again, it is because of the principle of indemnity that the doctrine of subrogation comes into operation: as soon as the insurer indemnifies the insured, he becomes entitled to all the rights and remedies which the insured has against a third party. But the doctrine of subrogation cannot, for obvious reasons, apply to life insurance which is not a contract of indemnity.

Marine insurance contract is, however, not a contract of complete indemnity as such a contract does not cover all the losses which the subject-matter might suffer in connexion with a voyage. For the losses falling under the contract of affreightment or not specifically insured against are not taken into account. The indemnity is imperfect also in the sense that the insured can, in the case of a valued policy, claim the agreed value which value may exceed the actual value of the subject-matter. In the case of unvalued policy, however, the insured cannot claim more than actual loss, but in marine insurance an unvalued policy is an exception rather than the rule.

"In the case of a ship, if it is fully insured for its insured value, the measure of indemnity is the reasonable

outlay for repairs, in which case the assured receives a complete indemnity; whilst as regards goods, in the generality of cases the claim has to be based on the gross sound value of the goods at destination, which may be more or less than the insured value, so that the assured may receive more or less than an indemnity."*

* Hurd, *Marine Insurance*, p. 24.

CHAPTER 14

THE MARINE INSURANCE POLICY

The document embodying the contract of marine insurance is known as a *marine insurance policy*. Such a contract must be in writing. Unless it is embodied in a written document, known as policy, it is inadmissible in evidence. A marine insurance policy must specify the following:

1. The name of the insured or of some person who effects insurance on his behalf.

2. The subject-matter insured and the risk insured against.

3. A description of the voyage or the period or time, as the case may be, for which the policy has been obtained.

4. The amount for which insurance protection has been obtained.

5. The name or names of the underwriters or insurers.

6. The signature by, or on behalf of, the insurer.

Form of Marine Insurance Policy.

Though theoretically the marine insurance policy issued by an underwriter or insurer may assume any shape, provided of course that it specifies the information detailed above, it is remarkable that most of the

marine insurance concerns use a typical or standard form. The policy which is thus most widely used is a very ancient document. It is the form which was prescribed in the year 1523 by the Ordinance of Florence, and was adopted in 1799 by the Lloyds as their standard form, and is appended as a Schedule to the English Marine Act of 1906. Its ancient origin certainly imparts to it a fair degree of veneration. It is only natural to suppose that this form would not and does not ordinarily fit in with modern requirements. Till the beginning of the 19th century this form served its purpose very well, but since then so many modifications and changes in marine insurance practices have taken place that this "very strange document" has been definitely regarded with contempt by certain insurance men and lawyers. Nevertheless, the old form still continues.

The reasons for this dogged persistence are not far to seek. The most obvious reason is the historic one. Since the present form has been in use for a very long time, it is still persisting. But a more important reason is a practical one. This policy (in this form) has been considered in so many legal cases and so many learned judgments have been deliverd on it that the meaning of almost every word used in it has become definite and certain. This is such a great advantage that nobody has yet succeeded in displacing this form by any other form, though it must be confessed that some modifications have certainly been made by some insurance companies in the original form.

Kinds of Insurance Policies.

The risk or risks to which cargo and ship on sea are exposed are of varying character. The risk varies according to the type of ship, the nature of cargo, the character of the voyage, the climate of the regions through which the ship and cargo have to pass, the existence of warfare and similar other factors, all of which are not constant in the case of all the marine enterprises. It is, therefore, natural to find that persons seeking marine insurance protection demand different types of policies. This has led to several kinds of marine insurance policies.

1. *Voyage Policy.*—A voyage policy is a policy which is taken in respect of a particular voyage; for instance, a policy insuring goods from Calcutta to Tokyo is a voyage policy. Such policies are suited to the insurance of cargo and not to the insurance of ship or vessel for the simple reason that the movements of a ship or vessel cannot always be confined definitely between certain ports.

2. *Time Policy.*—A marine insurance policy may also be taken for a definite period of time; for instance, from January 1, 1941, to December 31, 1941. Such a policy is known as a time policy. The maximum period for which a time policy can be isued is 12 months, policies of longer duration than one year being invalid. Time policies are most suited for hull insurance because the ship-owner is then relieved from taking a new policy for each voyage while at the same time he gets the advantage of lower premium rate. Time policies are also

taken when shipments of small value are made from time to time of a more or less fixed annual amount.

3. *Mixed Policy.*—A policy which combines the features of a voyage as well as a time policy is known as a mixed policy. It insures a certain subject-matter from a certain port to another port for a certain period of time. For instance, a policy insuring a subject-matter from Bombay to London from January 1 to December 31 of the year 1942 is an instance of mixed policy. A mixed policy is generally taken on ships sailing between certain fixed ports.

4. *Valued Policy.*—A valued policy is one in which the value of the subject-matter is declared at the very outset in the policy itself. The value which is declared is known as the *insured value* and is equal to:

(1) cost of the goods; plus

(2) freight and shipping charges, etc.; plus

(3) a 10% or 15% margin for anticipated profits.

In a valued policy the insured value is the measure of indemnity. In the case of total loss, it is the declared amount which becomes payable; and in the case of partial loss, it is this amount which becomes the basis of the settlement of the claim. Valued policies are extremely common these days.

5. *Unvalued Policies.*—A valued policy should be distinguished from an unvalued policy. An unvalued policy is one in which the value of the subject-matter of insurance is not expressly declared and is left to be

found out later if and when claim arises. The measure of indemnity in this case is not the insured value but the *insurable value* which is found out by adding freight and shipping charges only to the cost of goods. It should be clearly understood that no margin for anticipated profits can be added to the cost in this case. In the case of total loss, it is this insurable value which becomes payable; and in the case of partial loss, it is this value which becomes the basis of assessment of liability of the insurance company. Unvalued policies are not common these days.

6. *Floating Policy.*—A floating policy is a policy which is taken for a round sum to cover several shipments; the name of the ship and other particulars about shipments made under it being declared as and when they are made, till the total insured amount "opened" is exhausted. This type of policy is also known as a *Declaration Policy* or *Open Policy*. This type of policy is most suited to a merchant who makes regular shipments of goods between certain ports inasmuch as it relieves him of the necessity of taking a policy each time the shipment is made, at the same time giving him the advantage of a lower premium rate.

7. *Interest Policy.*—An interest policy is a policy in which the insured has an insurable interest in the subject-matter of insurance. As already discussed before a marine insurance policy must possess insurable interest in order to be valid. It follows, therefore, that every valid marine insurance policy is an interest policy. Since marine insurance policies are sometimes taken

by persons having no or doubtful insurable interest, it is usual to discuss interest policy as a class in order to distinguish them from what are known as wager policies or policies proof of interest.

8. *Wager Policy.*—A policy in which the insured does not have any insurable interest in the subject-matter of insurance or in which the underwriter dispenses with any proof of interest is known as a wager policy. Policies containing such expressions as "Policy Proof of Interest" (P.P.I.) or "Interest or no Interest," belong to this category. An insurance contract without insurable interest is just like gambling or wager; hence, the name a *wager policy*. Such a policy cannot be enforced in a court of law and if the underwriter refuses to honour his promise, the insured has no legal remedy against him. But usually the underwriter, who gives his promise under a wager policy, does not repudiate the contract for the sake of maintaining his prestige or honour. This has given the name of 'Honour Policy' to this category. 'Such insurances undoubtedly supply a commercial convenience in the case where there exists some interest which is difficult, perhaps incapable, of actual proof (for example, an insurance against the risk of an increased government duty or of the taxation of article previously duty-free). But P.P.I. policies have been frequently resorted to as a means of gambling, pure and simple.'

9. *Block Policy.*—Block Policy is specially of African origin and is very common in the gold-mining region of South Africa. A block policy covers the

yellow metal from the time of its recovery from the bowels of the earth to its destination, including all the intermediate processes through which it has to pass, as for example, its passage through refineries, overland routes, etc. Such policies form a special class of their own.

10. *Currency Policy.*—Policies issued in foreign currency are known as currency policies. English underwriters in particular are reputed for their keenness to underwrite risks in various parts of the globe. They issue policies to persons of almost every country of the world. English underwriters of course use pound-sterling but on account of fluctuations of foreign exchange rates, foreigners hesitate in purchasing insurance from British underwriters or insurers because when the claim arises and the insured amount is paid in English currency, it might be found to be an inadequate cover due to the vagaries of the foreign exchanges. To overcome this difficulty, English underwriters issue policies in foreign currencies also.

Construction of Policies.

Regardng the rules of construction that are to be applied to a marine insurance policy, Lord Ellenborough has expressed the opinion that the same rule of construction which applies to other instruments applies equally to this, namely, that it is to be constructed according to the sense and meaning as collected from the terms used in it, which terms are to be understood in the plain, ordinary and popular sense unless they have

generally, in respect to the subject-matter, as by known usage of trade or the like, acquired a peculiar sense, distinct from the popular sense of the same words, or unless the context evidently points out that they must, in the particular instance, and in order to effectuate the immediate intention of the parties, be understood in some other special and peculiar sense. But the evidence of custom or usage is admissible only when the meaning of the contract is ambiguous or doubtful. For "usage is only admssible to explain what is doubtful, never to contradict what is plain."

CHAPTER 15

PHRASEOLOGY OF THE MARINE POLICY

In this chapter we shall discuss the clauses of the standard marine insurance policy. It has already been remarked that the most of the marine insurance companies and underwriters use the standard form of the policy in business. Importance of the discussion of the clauses of this policy can, therefore, be easily understood.

1. The Opening Words.

A marine insurance policy opens with the following words which are expressed in the shape of a declaration—

"Be it known that....."

A variation is found in certain policies which still open with the words—

"In the name of God, Amen."

The opening words do not have any legal significance, they being merely formal.

2. Name of the Insured.

After the words "Be it known that" blank space is left for the insertion of the name of the insured person. The name of the insured or his agent must necessarily be written in this blank space provided after

the opening words. The document shall not be deemed a policy unless this space is filled in.

3. Assignment Clause.

After the name of the insured, the standard policy runs as follows—

> "....as well in his on their own name, as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain in part or in all, doth make assurance and cause...... and them and every of them to be insured....."

These words make provision for the assignment of the policy to other persons who might later acquire insurable interest in the subject-matter of insurance. The importance of the assignment of a marine insurance policy is very great, for the goods may change hands several times while they are still on sea; and it is only logical that marine insurance policy should be allowed to be transferred along with the transference of the ownership in the goods. A marine insurance policy, it should be noted, can be assigned even if the words quoted above are not included in it, unless of course assignment is specifically prohibited. The mode of assignment of an insurance policy is usually that of endorsement and delivery.

4. Lost or Not Lost.

It sometimes happens that the shipper effects insurance after the ship or goods have started for the voyage. That may happen either because the shipper

gets information of shipment quite late due to some reason or the other, or because he does not get the opportunity to purchase insurance in time. In such a case, the shipper as well as insurance company are equally ignorant of the safety or otherwise of the subject-matter of insurance. Consequently, *Lost or Not Lost* clause is inserted in the policy, which shows that the fact as to whether the subject-matter of insurance has been lost before the date of issue of the policy or not, has no bearing on the rights and liabilities of the insurer and the insured. This clause thus has a retrospective effect and even if the goods have been lost prior to the issue of the policy, the underwriter would be liable to indemnify the insured in respect of such loss or damage.

In order that the *Lost or Not Lost* clause may have effect both the parties, *viz.*, the insurer and the insured, must be completely in ignorance about the safety or otherwise of the subject-matter at the time the policy is issued. If the insured knows at the time of purchasing the policy that the goods have been destroyed or damaged, which he does not disclose to the insurer, he is guilty of breach of good faith and concealment which render the policy void. On the other hand, if the insurer knows at the time of issuing the policy that the subject-matter has reached the destination safely, the policy will be equally void for the insurer has no risk to run. *Lost* or *Not Lost* clause can have effect only when the insurer and the insured maintain complete good faith.

In modern times, means of communicaion like telegrams, cables and radios have made so much progress that it is quite easy to obtain exact and up-to-date informtion regarding the safety or otherwise of the ship. Consequently this clause is not of much practical utility these days. In ancient times such means of communication were either unknown or deficient. As such the insured was quite in the dark for a considerable time about the safety of the subject-matter and the insurer was probably a little more informed than the insured. Both the parties being more or less completely ignorant of the safety or otherwise of the subject-matter, the insertion of this clause was logical and necessary in those times.

5. At and From: Description of the Voyage.

The next clause is known as "At and From" claluse and describes the voyage to be undertaken. In this connection two phrases should be clearly distinguished from each other, namely, "*At and From the Port*" and "*From the Port.*" A policy insuring a subject-matter at and from the port covers it while it is lying at the port of departure and from the time it sets off therefrom. A policy covering risk from the port on the other hand, protects the subject-matter only from the time of its departure from the port of start. Suppose a ship XYZ is lying in the port of Bombay and is destroyed by fire just an hour before the time of its departure. If the policy relating to it were to contain "At and From" clause, this loss would be made good by the insurance

company. But should the policy contain only the clause "From Bombay," this loss would not be made good by the insurance company.

When a vessel arrives at a port, it is generally covered by an outward policy which is to expire after a period ranging from 24 hours to 30 days after her arrival. If a new policy is taken with "At and From" clause, this period would be covered in both policies. This duplication is avoided by inserting in the new policy something like the following—

> "The risk is not to commence before the expiry of previous policies."

These words are used only in the case of voyage policies. In the case of time policies, the risk is described by inserting the actual dates and hours of commencement and termination of the risk.

6. Name of the Ship or Vessel.

After the clause describing the voyage comes the clause which describes the vessel by which the voyage is to be made. The mention of the name of the vessel is not legally compulsory, but it is usually inserted in the marine insurance policy. The space for the insertion of the name of the ship or vessel is provided as follows:—

> "upon any kind of goods and merchandises.....in the good ship or vessel called the....."

In the standard policy form two words, ship and vessel, have been used because in the English lang-

uage there is no one word which can be applied to both. The term *ship* is too particular and the term *vessel* is too general.

The expression "the *good* ship or vessel" is simply meant to bring before the insured the implied warranty of seaworthiness. But as the warranty of seaworthiness is implicit in a marine insurance contract, this word is practically a useless addition to the phraseology of the marine insurance policy. It can, however, be justified on historical grounds.

It should be understood that once the name of the ship has been entered in the marine insurance policy, the ship cannot afterwards be changed without the permission of the underwriter; and it is immaterial whether the ship changed is better or worse than the original one named in the policy. An exception is made in the case when the original ship meets with some disaster and the cargo on board is put on another ship.

7. Name of the Master.

The policy next provides space for the insertion of the name of the master in the following manner—

> "........whereof is Master, under God, for the present voyage,.......or whosoever else shall go for Master the said ship, or the Master whereof, is or shall be named or called,......"

Now-a-days the name of the master of the ship is not very important because of the control that human ingenuity has secured over nature while venturing on

sea. It is not usual these days, therefore, to insert the name of the master in the space provided in the policy. However, in some rare cases when the voyage is specially dangerous and the services of a very expert navigator are required, the name of the master has to be inserted. In such a case the name of the master becomes an extra warranty and must strictly be complied with. But in most cases this is a relic of the olden times when voyage was a perilous undertaking and the safety of the ship and cargo used to depend to a fair degree on the skill of the master.

This clause also makes the provisions that if by reason of illness or some other accident the master originally named cannot take the command, another master may be substituted for him but the expression "whosoever else shall go as master in the said ship" should not be too widely interpreted. It would not justify the insured's representation to the underwriters that the master of the ship is a famous person known for his skill and dexterity, knowing fully well that the ship will sail under the command of another person.

A provision is also made for a case where the name of the master is inaccurately spelt or otherwise wrongly inserted. Such a mistake has no effect on the validity of the contract.

8. Commencement and Termination of the Risk.

After this is given the clause governing the commencement of the risk and its termination. So far as

the ship or vessel is concerned, the commencement of the risk is determined by the "At and From" clause which has already been discussed above. The policy continues to cover her "until she hath moored at anchor for 24 hours in good safety" in port of destination. It follows, therefore, that if a ship is destroyed or damaged before the expiry of the 24 hours (after its arrival at the port of destination), this loss will be covered by the marine insurance policy taken in respect of the voyage then completed. In some voyage policies it is mentioned that the policy would cover the vessel for 30 days after her arrival at the port of destination counted from the exact time of the day at which she arrives and is moored in safety, each day being taken as equal to 24 hours. In the absence of any stipulation to the contrary, this period of 30 days would be counted after the expiry of the above-mentioned 24 hours.

In the case of goods (and freight) the risk commences from the moment goods are placed on board the vessel unless there is an agreement to the contrary. The relevant clause of the standard policy runs as follows:

> "Beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship . . . . ."

The risk terminates until the goods and merchandises are "discharged and safely landed." If by trade usage goods have to be landed by means of lighters or some other craft, the policy would continue to cover them while they are in such craft.

9. Touch and Stay.

The next clause purports to authorise the ship to touch and stay at ports lying on the customary routes. The standard form of policy states—

> "and it shall be lawful for said ship, etc., in this voyage to proceed and sail to and touch and stay at any port or places whatsoever, without prejudice to this insurance."

It appears from the language of the above clause that the ship is authorised almost without any restriction to make a call at any port or ports she thinks fit or finds necessary without any prejudice to the insurance contract. But actually this is not so. At least three important limitations to this authority must be recogised.

1. The ports which the ship touches and stays at must be located on the ordinary course of the voyage. If the ship reaches a destination by route other than the customary route she will evidently call upon certain ports not in the customary course of the voyage and this shall be deeemed as unauthorised.

2. The port must be called at in the order laid down in the policy or, its absence, in their geographical order. For instance, a ship going from Bombay to London must first call at Aden before making a call at Suez.

3. The call must be made for some justifiable purpose in connection with the voyage insured.

It will thus be evident that this clause authorises the ship to touch and stay at the customary ports for reasonable purpose connected with the insured voyage, any

departure from the ordinary course being unauthorised.

Deviation.

When a ship departs from the customary course, she is said to have deviated. Deviation may be defined as a departure from the customary course of the voyage. We have already noticed that non-deviation is an implied warranty and this breach is evidently fatal to the contract of insurance, i.e., the insurer is discharged from his liability from the moment the deviation takes place. According to the English Marine Insurance Act.—

> Where a ship, without lawful excuse, deviates from a voyage contemplated by the policy, the insurer is discharged from the liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

There is a deviation from the route contemplated by the voyage—

(a) Where a course of the voyage is specifically designated by the policy and that course is departed from; or

(b) Where the course of the voyage is not specifically designated by the policy, the usual and customary course is departed from.

It should, however, be noted that the mere intention to deviate is quite immaterial. There must be a deviation in fact to discharge the insurer from his liability under the contract.

There are, however, certain cases when a deviation is excusable. In these cases a policy continues to hold good despite the occurrence of deviation. We, therefore, explain below the circumstances or cases in which deviation is justified or excused:—

(1) *Where authorised by any special term in the policy.*

The authority to deviate is sometimes specifically given in the policy itself. This is ordinarily incorporated into the policy by the insertion of a clause known as *Deviation or Change of Voyage clause.*

(2) *Where it has been caused by circumstances beyond the control of the master and his employer.*

Deviation is also justified when its occurrence has been caused by circumstances beyond the control of the master and his employer. For instance, if a vessel is blown out of her course by violent gales, the master or his employer could not evidently help it and in such a case deviation must be excused. But it seems that the deviation caused by an agency other than violence of elements would not be excusable.

(3) *Where the deviation is reasonably necessary in order to comply with an express or implied warranty.*

Seaworthiness is an implied warranty and a deviation made in connection with this implied warranty would be excusable. In other words, deviation made for the purpose of putting the ship in the state of seaworthiness does not vitiate the policy.

(4) *When the deviation is reasonably necessary for the safety of the ship or the subject-matter insured.*

This clause is quite simple. It only states that if it is necessary for the safety of the ship or the cargo that the ship should deviate, such a deviation would be excused. If a vessel is so damaged by violence of elements that she requires speedy repairs for her safety and for the safety of the cargo and with this object puts in a port of refuge, such a deviation would be allowed.

(5) *When the deviation is made for the purpose of saving human life or aiding a ship in distress where human life may be in danger.*

This exception is justified on the grounds of humanitarian considerations. A legislation prohibiting deviation with a view to save human life would be very inhuman indeed.

(6) *Where it is reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship.*

This exception is also justified on humanitarian grounds.

(7) *Where the deviation has been caused by the barratry of the master or the crew if barratry is one of the perils insured against.*

Barratry may be provisionally defined as any act of the master or the crew of a vessel in violation of his or their duty wrongly and wilfully done by him or them. If barratry is covered by the policy, deviation due to barratry will not vitiate the contract.

(8) *When the cause excusing the deviation or delay ceases to operate, the ship must resume her course or prosecute her voyage with reasonable dispatch, otherwise deviation will again take place and the contract will become void.*

10. Valuation.

The next clause is the valuation clause and lays down the value of the subject-matter insured. The wordings of the clause are as follows:—

> "The said ship, etc., goods and merchandises, etc., for so much as concerns the assurer by agreement between the assured and assurer in this policy, are and shall be valued at……"

The space left blank is meant for the insertion of the value of the subject-matter. It is evident that this valuation is to be inserted only in the case of a valued policy. An unvalued policy, it must be remembered, is quite a rare occurrence these days. In the case of an unvalued policy, the value is assessed when the loss takes place. In the case of an unvalued policy the value is

to be proved when the claim arises which value is known as the insurable value. The insurable value is to be ascertained as follows:

(1) In insurance of ship the insurable value is value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole.

(2) In insurance of freight, whether paid in advance or otherwise, the insurable value is the gross amount or freight at risk to the assured, *plus* the charges of insurance.

(3) In insurance on goods or merchandise, the insurable value is prime cost of the property insured, *plus* the expenses of and incidental to shipping and the charges of insurance upon the whole.

11. Perils.

The next clause describes the risks which the underwriters take upon themselves. The wordings run as follows:—

> "touching the Adventures and perils which we, the assurers are contended to bear and do take upon as in this voyage, they are, of the seas, man-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes and

> people, of what nation, condition or quality soever, barratry of the master and mariners and of all other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the said goods and merchandises and ship, etc., or in part thereof."

This clause is quite comprehensive and describes all the perils which are taken over by the insurers. The first is the *perils of the sea*. This term does not cover every accident which may happen on the sea but only a peril *of* the sea. *Fire* is the next peril insured against, but if the fire is caused by any cause for which the insured is responsible, it will not come under the policy. *Men-of-war* and *enemies* relate to the damage or destruction caused by the activities of hostile nations. Danger from *pirates, rovers and thieves* who carry on plundering activities for their own private ends and not under he authority of the governments also come under the policy. Losses by *jettison* come next in order and can be recovered under the policy. Jettison includes the throwing overboard of cargo or goods or the cutting away of masts or some other part of the ship for lightening her. *Letters of mart and countermart* were granted by governments authorising the holders to make reprisals on enemy ships. Letters of countermart were meant to authorise the holders to offer resistance to the holders of letters of mart. Next come *surprisals, takings at sea, arrests, restraints and detainments* of all kings, princes and people of what nation, condition or quality soever. *Barratry* is the next risk covered by the policy. As already stated barratry

refers to any act committed by the master or the crew in violence of his or their duty wrongly and wilfully. If the master or mariners set the ship on fire or fraudulently sell the ship and cargo and keep the proceeds to themselves, this will be an example of barratry.

12. Sue and Labour Clause.

The next clause authorises the insured to take steps to save the property insured from losses or damage without prejudice to his rights and is known as *Sue and Labour clause.* It runs as follows:—

> "and in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assign to sue, labour and travel for, in, and about the defence, safeguard and recovery of the said goods and merchandises and ship, etc., or in part thereof without prejudice to this insurance, to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of the sum herein assured."

The clause gives permission to the insured to do everything reasonably and prudently with a view to mitigate the loss to which the insured's property is exposed, "as if uninsured." It should, however, be noted that the insured must act reasonably and prudently and the property insured must be in real danger for which the underwriter is liable under the policy. The expenses so incurred by the insured will be paid back to him by the insurers in proportion to the sums for which they have held themselves responsible.

13. Waiver Clause.

The *Waiver Clause* supplements the Sue and Labour Clause and provides that either the insured or the insurer may take such steps as are necessary for mitigating or minimising the losses of insured property without prejudice to their rights and liabilities. The clause is expressed as below:

> "and it is especially declared and agreed that no acts of the insurer or the insured in recovering, saving or preserving the property of the insured shall be considered as a waiver or acceptance of abandonment."

14. Consideration.

The next clause is very lengthy and is known as the *Consideration or Premium Clause*. It contains the acknowledgement on the part of the underwriter that he has received the premium agreed upon and as set forth in the policy. The general practice is that the premium is paid not immediately when the policy is issued but on the 8th of the following month. The reason why this clause is still inserted in the policy is to ensure that the underwriter does not repudiate his liability under the terms of the policy later on any ground relating to the payment of the premium.

15. Memorandum.

At the foot of the policy is found an *N.B.* which is known as *Memorandum Clause*. The object of this clause is to protect the underwriter against small claims which may arise due to the perishability of the cargo. The Memorandum clause provides that—

(*i*) The underwriter shall not be liable for partial loss on corn, fish, salt, fruit, flour, and seed, all of which are extremely perishable in their nature.

(*ii*) The insurer shall not be liable for partial loss below 5 per cent on sugar, tobacco, hemp, flax, hides and skins which are presumably less perishable than the articles coming under the first category above.

(*iii*) The underwriter shall not be liable for any partial loss below 3 per cent on all other goods including the ship and the freight.

Though the underwriter is exempted from the above liabilities, he is to assume them in the following cases:

(*a*) If the partial loss is a general average; or

(*b*) If the ship is stranded, *i.e.*, sticks to the ground and ceases to move.

Some Special Clauses.

Besides the above clauses some special clauses are also at times inserted in marine insurance policy, the more important of which are discussed below:

F.P.A. (Free of Particular Average)—This clause exempts the underwriter from any liability in respect of particular average. If the partial loss is not particular average, the underwriter will of course be liable for it.

W.P.A. (With Particular Average)—This clause means that the underwriter is liable for particular average.

F.G.A. (Foreign General Average)—This clause provides that as the general average statement is prepared in accordance with law of the port of destination or the law of the intermediate port, if the journey is broken in the middle, the general average statement prepared according to the law of such a foreign port will be acceptable to the insurer and the insured.

A.A.R. (Against All Risks)—This clause covers all the marine risks against which protection is sought.

F.A.A, (Free of All Average)—This clause exempts the underwriter from all partial losses, general average or particular average.

F.C.S. (Free of Capture and Seizure)—During war time the danger of capture and seizure increases immensely and it becomes usual to exempt the underwriter from this risk by the inclusion of the *F.C.S.* clause in the policy. The underwriters are, however, prepared to cover even this risk if an additional premium is paid to them.

R.D. (Running Down or Collision Clause)—This clause provides that if the ship happens to collide against another ship and is found guilty of collision, the insurer shall pay a proportion of such loss, usually 75 per cent, to the insured. Evidently, this clause is inserted only in the policies on ships or vessels. A separate mention of this liability is called for since the standard form of policy does not cover this risk.

Continuation Clause—It sometimes happens that the policy covering the ship or vessel expires before she reaches the port of destination. The continuation clause provides that in such a case the cover shall continue till her arrival at the port of destination on the payment of a pro-rata premium, provided previous notice has been given to the underwriter.

CHAPTER 16

MARINE LOSSES

Marine losses are to be borne by either of the three parties, *viz.*, the carrier, insurance companies and cargo-owners. If loss takes place due to a cause included in the contract of affreightment (*i.e.*, Bill of Lading or Charter Party), the carrier will be liable for it. But if the cause of the loss is one of the "perils insured against," it will be the insurance company which will bear the loss. If the loss is such that it cannot be recovered from either the carrier under the terms of the contract of affreightment or the insurance company under the terms of marine insurance policy, the owner will be liable to bear it.

Doctrine of Causa Proxima.

The doctrine of causa proxima is also known as the principle of proximate cause. It is contained in the expression, *Causa proxima non-remota spectatur.* (Look to the proximate and not to the remote cause). When a marine loss takes place due to a number of causes, some of which are insured against while others are not, the doctrine of causa proxima has to be applied in order to find out whether the insurance company is liable for it or not. This principle merely states that in such a case the proximate cause of loss should be found out; and if it is one of the perils insured against, the insurance company will have to pay the loss.

Some examples would make the application of this theory clear. Suppose a ship is on sea when some rats make a hole in the bottom of the ship, with the result that water rushes inside the ship and some cargo is damaged or destroyed. In this case there are two causes of the loss that takes place—rats and water. Of these, water is the more proximate cause and consequently the loss would be made good by the insurance company. To give another example, a ship was disabled by certain marine perils and her captain had to take her to a port of refuge. He, however, had no funds to get the repairs effected, and for that reason be sold off some cargo. The court in this case held that the loss of cargo was not occasioned by a peril of the sea, though such perils were certainly the remote causes thereof. The proximate cause was the want of funds, and as this was not one of the perils insured against, it did not give rise to a claim.

This theory, however, is of more general application and it can be stated that an insurance company is liable only for those losses which are promixately caused by an insured peril, and not for those which are not purely caused by an insured peril. It would thus be clear that by virtue of this principle, an insurance company cannot be held liable for what are known as "consequential losses" *e.g.*, loss of market, loss through delay in replacing, loss arising out of inability to complete a venture in time. These losses may be called indirect losses. An example would make the point clear. Suppose a ship is damaged by the perils of the

sea. Then all that her owner can recover is the cost of actual repairs. He cannot claim the loss that has been inflicted on him because of the ship remaining out of service.

Kinds of Marine Losses.

Marine losses can broadly be divided into total and partial. The former class is further subdivided into actual total loss and constructive total loss.

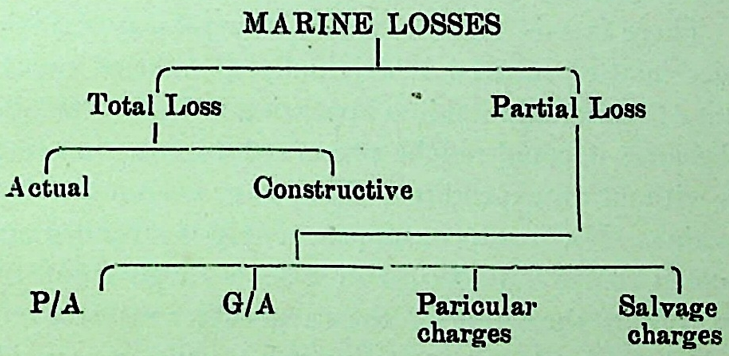


Chart Showing Kinds of Marine Losses.-

Total loss does not include partial loss. A policy taken against total loss only, does not give rise to a right to obtain compensation in the case of partial loss; nor can the insured realize anything in respect of a total loss if the policy is taken against partial loss only. But if the policy conditions include both the partial loss as well as the total loss, the insured is entitled to recover for partial loss if the claim for total loss cannot be maintained.

Total Losses.

When the entire subject-matter of insurance is lost, a total loss is said to have taken place. Total loss can be actual or constructive.

Where the subject-matter insured is destroyed, or is so damaged as to cease to be the thing of the kind that was insured, or when the insured is irretrievably deprived of it, an *actual total loss* is said to have taken place. If a ship is reported as lost, it will be treated as an actual total loss.

There is said to be a *constructive total loss* if the subject-matter insured is originally abandoned on account of its actual total loss appearing to be unavoidable or because it could not be preserved from actual total loss without an expenditure equal to or even more than its value. For instance, suppose a ship is stranded and it would cost Rs. 12,000 to save some cargo from the ship; but if the value of the cargo after its recovery would be only Rs. 10,000, it would be quite reasonable to abandon the goods and the loss would be regarded as constructive total loss.

Procedure of Making a Claim for Total Loss.

The insured while making a claim for total loss should first give a *Notice of Claim*. It must be given to the insurance company as soon as possible and the following documents must accompany such a notice:

1. *Notice of Abandonment.*—Such a notice is given in the case of constructive total loss. The insured herein states that he abandons his right in what re-

mains of the subject-matter in favour of the insurer. There are two conditions which must be satisfied to make such a notice valid: Firstly, it must be correct, clear and unconditional: and secondly, it must be given within reasonable time. The insurer may accept the notice which would mean that he undertakes to make good the total loss. If he rejects the notice, the insured must file a suit against him, if he wants to establish his claim, without loss of time.

2. *Protest.*—It contains a detailed account of the accident and the loss. This must be signed by the captain as well as by one or two officials of the ship in the presence of a notary public who must attest it. The submission of protest is essential to prove that a loss has taken place.

3. *Invoice.*—The invoice of the goods must also be attached. It is absolutely essential with a view to give a correct idea of the value of the goods.

4. *Bill of Lading.*—This is another document to be attached with the notice of claim given to the insurer. It goes to prove that the goods were actually shipped.

5. *Insurance Policy.*—The insurance policy is also to be submitted to the insurer along with other documents.

6. *Letter of Subrogation.*—It is also sent with other documents. According to law, as soon as the insurer indemnifies the insured, he steps into the shoes of the insured and becomes entitled to all the rights and remedies which he (the insured) had in respect of the loss thus made good, including the right of proceeding

against any third party in the name of the insured. Though a letter of subrogation is not absolutely essential, it is customary to attach this to the notice of claim.

Unrepaired Damage.

Where under the same policy a partial loss which has not been repaired or otherwise made good is followed by a total loss, the insured can only recover in respect of total loss.

But if a vessel is damaged and the damage is not repaired before the policy covering the vessel for the voyage or the time during which the damage occurs, expires, the total loss during the currency of a subsequent policy will entitle the insured to recover from one set of underwriters in respect of the total loss and from the other set of underwriters in respect of the amount due for the unrepaired damage. This is a departure from the doctrine of indemnity, but is the only practical solution of the difficulties which arise in cases where two totally different set of underwriters are involved.*

Partial Loss.

Technically, a partial loss is known as "Average". Average may be *Particular* or *General*. We shall discuss both of them below.

Particular Average.

Particular Average may be defined as a partial loss of a particular interest (as the ship alone or cargo

*Keate, *Marine Insurance.*

alone) accidentally and proximately caused by a peril insured against. The following are the essential features of a particular average:

1. It is a partial loss.
2. It must attach to a particular interest.
3. The loss must be accidental.
4. The proximate cause of the loss must be a peril insured against.

Particular Average on Cargo.—In case goods suffer partial average, then on their arrival at the port of destination, they are surveyed by an expert surveyor who certifies their being in a damaged condition and also gives the probable cause of the damage. Then a *Statement of Particular Average* has to be made out.

In preparing the Statement of Particular Average, the following stages may be carefully noted:

1. First of all, one has to find out or measure the actual loss that has taken place. The excess of the amount that the goods would have realised had they reached the destination safely, over the amount the goods would now fetch in damaged condition, is the measure of the actual loss.

2. In the case of an unvalued policy, the insured can recover the above-mentioned actual loss, subject to the limit of the sum insured.

3. In the case of a valued policy, the actual measure of loss is to be adjusted on the basis of insured amount. Suppose a policy was taken for Rs. 25,000 and it is estimated that the goods would have realised

Rs. 20,000 in undamaged condition, but now being damaged they realise only Rs. 15,000; then the actual loss comes to Rs. 5,000 and the adjustment would be made by the simple rule of three as follows:

Because, Loss on Rs. 20,000 is Rs. 5,000

Hence, Loss on Rs. 25,000 will be $\frac{5{,}000 \times 25{,}000}{20{,}000}$

=Rs. 6,250.

4. The insured can also realise from the insurer the various expenses incurred by him for the preservation of the subject-matter or paid by him as survey fees, sales charges, etc.

Illustration.—A cargo consisting of 10,000 bags was insured for Rs. 100,000. But 2,000 bags were damaged and would realise Rs. 2 per bag. The following expenses were also incurred by the insured: 1% commission, Rs. 10 as survey fee and Rs. 20 as sales expenses. You are required:—

(1) to prepare a Particular Average Statement assuming that goods would have realised Rs. 11 per bag in their undamaged conditions and the policy is valued;

(2) to prepare a Particular Average Statement assuming that the goods would have realised Rs. 8 per bag in their undamaged condition and the policy is valued; and

(3) to state what would be the extent of claim in each of the above two cases if the policy is unvalued.

The following would be the procedure to calculate the loss in the above cases:

(a) First of all we will have to find out the extent of loss. In order to arrive at this figure the amount the goods realise in damaged condition should be deducted from the amount they would have realised in undamaged condition.

(b) In the case of valued policy, the amount of loss will have to be adjusted according to the amount of the policy.

(c) If the policy is an unvalued one, the actual amount of loss will be paid, subject to the maximum amount insured.

Working out the above illustration on these lines, the actual Statements of Particular Average would appear thus:

(1) Statement of Particular Average Claim

Particulars	@	Rs.	a.	p.	Rs.	a.	p.
	Rs.						
The insured value of 10,000 bags	10	1,00,000	0	0			
The amount 2,000 bags could realise if undamaged ...	11	22,000	0	0			
The amount they actually realise in damaged condition ...	2	4,000	0	0			
Damage ...	...	18 000	0	0			
∴ Damage on Rs. 22,000 is Rs. 18,000,							
∴ Damage on Rs. 20,000 (insured value) is	...	...			16,363	10	2
CHARGES							
Commission on sale ...	1%	40	0	0			
Survey Fee	...	10	0	0			
Sale Expenses	...	20	0	0			
					70	0	0
Claim ...	...	... Rs.			16,433	10	2

(2) Statement of Particular Average Claim

Particulars	@	Rs. a. p.	Rs. a p.
	Rs.		
The insured value of 10,000 bags	10	1,00,000 0 0	
The amount 2,000 bags could realise if undamaged ...	8	16,000 0 0	
The amount they actually realised in damaged condition	2	4,000 0 0	
Damage ..		12,000 0 0	
∵ Damage on Rs. 16,000 is Rs. 12,000 ∴ Damage on Rs. 20,000 (insured value) is ...		...	10,000 0 0
CHARGES			
Commission on sale ...	1%	40 0 0	
Survey Fee		10 0 0	
Sale Expenses		20 0 0	
			70 0 0
Claim ...	...	... Rs.	15,070 0 0

(3) In the case of an unvalued policy, no adjustments on the basis of the insured value are to be made. Therefore, in the first case the claim would be Rs. 18,070 (*i.e.*, Rs. 18,000 of actual loss and Rs. 70 for charges) and similarly in the second case the claim would be Rs. 12,070.

Particular Average on Ship.—In the case of a ship, the particular average is taken to be equal to the actual cost of repairing the ship. But an adjustment is made in this cost for the substitution of new materials for the old materials. No attempt is made to adjust this loss on the basis of the insured value as is done in the case of cargo. The insured value simply sets a limit up to which a claim can be made.

Particular Average on Freight.—If the freight has been paid in advance, the shipper would include it, along with the value of goods, etc., in the amount for which he takes the policy. In such a case, when he receives the compensation for damage to goods, he would receive compensation for loss of freight also.

If the freight is to be paid at destination, the shipowner usually obtains a policy for the outstanding freight. According to marine law, he is entitled to receive freight only on those goods which reach the destination safely. Hence if a part of the goods is lost on the way, *i.e.*, if a particular average takes place, the ship-owner will lose freight due on the goods lost. If he has obtained an insurance policy on freight, he will get the actual amount lost by him from the insurance company. He will lose freight on the goods lost, for

which loss he will be indemnified by the insurer under the freight policy.

General Average.

General average is a loss caused by, or directly consequential on, a general average act which implies any extraordinary sacrifice or expenditure undertaken voluntarily and reasonably in time of peril for the general safety of the property. According to this definition, the following are the chief characteristic features of general average:

1. The loss must be the direct result of a general average act.

2. The sacrifice or expenditure made or incurred must be of extraordinary nature. It should not be one which is ordinarily and necessarily undertaken in the course of the voyage.

3. The sacrifice or expenditure must not be accidental but must necessarily be voluntary and intentional.

4. The sacrifice or expenditure must be reasonable.

5. The sacrifice or expenditure must be done in time of peril which must be "substantial and threatening, and something more than the ordinary perils of the sea."

6. It should not be the safety of any one particular interest but of the entire property, which should be the object of sacrifice or expenditure.

7. The sacrifice or expenditure must result in the preservation of the ship and some part of the cargo.

8. The common danger, which is the cause of general average, must not be due to the default of the person whose interest has been sacrificed and who makes a claim for general average contribution.

Kinds of General Average.—Generally, general average is of two kinds. It may be a *sacrifice of some property*. The examples of such a sacrifice are found in acts of jettison, *i.e.*, intentional throwing overboard of some cargo or a part of ship with a view to lighten her or of the pouring of water on the cargo to prevent fire, or the burning of some cargo as fuel in the engine. It may also be the *expenditure of a certain sum of money*. Expenditure, for insurance, may be incurred in placing a part of the cargo in lighters or in towing a damaged vessel to a port of safety.

General Average Contribution.—When a general average loss arises, the party who suffers it may require the other parties interested in the adventure to pay a rateable contribution, subject to the provisions of maritime law. Such a contribution is known as a general average contribution.

It is the interests of the ship-owner, the cargo-owners and the receiver of the freight which are protected by incurring a general average loss. Naturally, therefore, these exactly should be the parties to bear the general average loss; each according to his interest at stake. These persons constitute what are known as *contributing interests*.

The next important question is regarding the proportions in which each of these three interests should

bear the general average, or, in other words, what should be the basis of contribution of each party towards the general average loss. There are the following legal provisions in this respect:

1. *The ship-owner.*—The basis of his contribution is the value of the ship on her arrival at the port of destination or at an intermediate port if the journey is broken up after she has met with general average.

2. *The Cargo-owner.*—The *net selling price* of the goods at the port of destination or at an intermediate port in case the journey is broken up, will form the basis of his contribution. Net selling price is arrived at after deduction of the selling charges from the selling price.

3. *The Receiver of Freight.*—His share of the general average loss will be determined by the freight saved by the sacrifice or expenditure.

The value at which the contribution of each will be determined is not the insured value but the value as arrived at on the above basis. Such values are known as *contributing values.* It should be very clearly understood that the contributing value and the insured value are quite different. Insured value has nothing to do with the contributing value. Similarly, contributing value does not depend upon insured value; it, on the other hand, chiefly depends on the price of the article in question (ship or cargo) at the port of destination or at an intermediate port in case the journey is broken up. Suppose a ship is insured for Rs. 50,000; but if her market value at the port of destination is estimated

to be Rs. 60,000, the ship-owner will contribute to the general average on the basis of Rs. 60,000 and not on the basis of Rs. 50,000. Similarly, if the value of ship is considered to be only Rs. 30,000, he will naturally be called upon to contribute on the basis of Rs. 30,000 only.

General Average Adjustment.—When a ship suffers a general average loss, her captain, on her arrival at the port of desination or at any intermediate port if the voyage is broken up, makes a declaration known as *protest* in the presence of a Notary Public, wherein he states the circumstances in justification of his course of action. He has also to employ the services of professional experts called the *Average Adjusters* for the purpose of adjusting the contribution of each party to the general average loss. As the process of general average adjustment involves several complexities of law and practice, it is always advisable to employ average adjusters, so that the contribution of each party may be correctly and justly calculated and no cuase for further litigation may arise.

Illustration of General Average Adjustment.—A vessel valued at Rs. 15,000 had a cargo of Rs. 9,000 placed on its board, the freight payable at destination being Rs. 1,000. The water rushes into the vessel throgh a hole cut by rats in her bottom. The captain thereupon jettisons one-third of the cargo, and a part of the remaining cargo is transferred to another ship at a cost of Rs. 200. Assuming the contributing value to be the same as above, the total loss would come to

Rs. 3,000 (cost of goods jettisoned) *plus* Rs. 200 (paid to the other ship for the carriage of the cargo), *i.e.*, Rs. 3,200. This loss is to be adjusted between the ship, the cargo and the freight whose contributing values are Rs. 15,000, Rs. 9,000 and Rs. 1,000 respectively. The contribution of each of the party is shown in the following table:

General Average Adjustment

Contributing Interests	Contributing Values	Proportions of Contribution	Contributions
	Rs.	Rs. Rs.	Rs.
Ship ...	15,000	15,000/ 25,000	1,920
Cargo ..	9,000	9,000/ 25,000	1,152
Freight ...	1,000	1,000/ 25,000	128
Total ..	25,000	...	3,200

York-Antwerp Rules.

The general average contribution is based on the principle of equity and is recognised in all the countries of the world. The law of every country makes due provisions regarding general average contribution but it is natural to expect certain differences in them. These differences logically lead to the differences in the details of the application of the general average to practice. This state of affairs leads to much confusion and trouble, for the ships of one country touch the shores of almost every other country and have at times to get general average statements prepared according to

foreign laws. To overcome this difficulty, the maritime countries of the world have joined together in formulating a set of rules in this respect so that the uniformity in the matter of general average contribution could be arrived at. For this purpose a conference of international experts was held at New York, then at Antwerp and finally at Liverpool in 1890. The rules framed by them are known as York-Antwerp Rules. In 1924 they were revised at Stockholm. York-Antwerp Rules are now included in almost all the charter parties and bills of lading.

Substituted Expenses.

When a ship meets with a particular average loss and, therefore, happens to seek a port of safety, her cargo has to be discharged for the purpose of repairing her and then reloaded. The expenses involved in this may be quite heavy, but sometimes the towing of the ship to the port of destination may be found to be a less costly alternative. In such a case, the latter alternative is substituted for the former one. The expenses incurred when the less costly alternative is adopted, are known as "substituted expenses." They are included in the general average statement and are apportioned on the aforesaid principles relating to general average adjustment.

General Average on Loss on Sale.

Sometimes the captain of the ship finds it necessary to incur extraordinary expenditure for the safety of

the venture and with a view to obtain funds for the purpose, has to sell off a part of the cargo. In such a case, the cargo-owners are entitled to the sale-proceeds; and if the goods have been sold for less than what they would have realised at the port of destination, they are also entitled to this loss which is made good by general average contribution. This is known as General Average on Loss on Sale.

Memorandum Clause: Janson Clause.

According to the memorandum clause,* the underwriters are given certain exemptions in the case of partial loss in some cases to the extent of 5 per cent and in some other cases, to the extent of 3 per cent. If the partial loss exceeds this limit of 3 or 5 per cent, the *entire* damage is made good by the insurer. But on the continent, a practice has grown according to which only that part of the damage which exceeds this minimum limit is payable by the insurer. This is called the *Franchise System or Janson Clause*. This is based on the idea that a part of the partial loss must fall on the insured; and it stipulates that only the excess of the partial loss over 5 or 3 per cent, as the case may be, shall be paid by the underwriters. In the case of valuation of Rs. 2,000, if damage comes to Rs. 90, the underwriters will pay only Rs. 30 if the 3% Janson clause is inserted; and will pay nothing if the 5% Janson clause is included. In ascertaining whether the speci-

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* See p. 161 *ante*..

fied percentage has been reached or not, no claim other than that for particular average and no expenses are to be considered. Nor can a general average clause be added up to a particular average clause to make up the minimum percentage.

Separate Valuation or Valuation by Series.

When an insurance is for a large amount, the partial loss must be of a considerable sum before any claim for particular average can be made under the policy, because of the provision of the memorandum clause. To lesson the severity of this clause, the entire subject-matter in such a case is divided into convenient parts or units or series; and memorandum clause then applies to each of these parts or units or series separately. Sometimes the last unit is shorter than one complete unit or series: it is known as "tail series."

Particular Charges.

The expenses incurred for the safety of a particular object are known as *particular charges.* The legal definition of particular charges describes them as "expenses incurred by, or on behalf of, the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges." Particular charges are incurred under "sue and labour clause" according to which the insured or his authorised agent can incur expenses for the safety of the subject-matter of insurance if it is in peril. These charges

are recoverable from the insurance company; but they must fulfil three conditions:

1. They must have been spent in connection with the perils insured against.

2. They must have been incurred in respect of a particular interest only.

3. They must have been incurred short of destination or prior to their arrival as destination.

Salvage Charges.

According to maritime law, if an adventure is in danger, any third party may try to save it either on being requested or of his own initiative. Such a party is entitled to a reward. Such a person is known as *salvor* and the reward due to him as *salvage*. He has a lien on the goods salved in respect of his reward. If the goods are not in his possession, he is entitled to file a suit in a court of law. But he can claim a reward only if he is successful, party or wholly, in his attempts. A salvor should be a person not interested in the property. For instance, the captain and crew of a ship are not entitled to salvage charges.

Salvage charges are payable by the owner of the property salved or by the party at fault. For example, if coal, runs short and the ship has to be towed to the port of destination, the cargo-owner cannot be made to bear such a charge.

The word salvage is variously used for the act of salvage, the remuneration to the salvor and also for the property salved.

CHAPTER 17

MARINE INSURANCE PREMIUMS, WARRANTIES AND BORROWINGS

Marine Insurance Premium.

Premium is the consideration that the insured pays to the insurance company or the underwriter for the acquisition of insurance. We have already seen that the calculation of premiums in the case of life insurance is a very scientific task. The sciences of Statistics and Mathematics and the reliance that can be safely placed on the past mortality experience have enabled the forecast of future claims with a precision which does credit to this business. This amount of precision and exactness is not to be found in the determination of marine insurance premiums. This is due to a variety of causes. Firstly, we do not have the same amount of data relating to marine losses as we have relating to human mortality. Moreover, the risks to which ship and goods while on sea are, exposed are so many in number and so complex in nature that incidence of loss resulting out of these multiple risks cannot be predicted with any amount of certainty. It is, therefore, natural that determination of premium rates in marine insurance should involve a certain amount of guess-work. But the premiums charged by various insurance companies for similar risks and by charging which they can keep their heads above water in the

competitive struggle, offer a good indication of the level at which premium rates may and should be fixed. A new company engaged in marine insurance usually takes the rates of a sister concern as its guide and by a process of trial and error and its own experience, it comes up to fix a schedule in course of time, which it uses with confidence.

Payment of Premium.

On the Lloyd's form of marine insurance policy, the insurer acknowledges the receipt of the marine insurance premium from the insured. The relevant clause runs as follows: "Confessing ourselves paid the consideration due unto us. . . ." In actual practice, the payment may not have been made on the date on which the policy comes into force. In the case of London insurance companies, the premium falls due on the eighth day of the following month. On the Lloyd's it is usual for the insurance broker and insurer to carry on a current account, setting claim against premiums, and passing cheques for the balance due at the end of each quarter, except in the case of heavy claims.* Similarly in Glasgow, accounts are settled monthly rather than quarterly. This practice is undoubtedly very useful as it smoothens the course of business by avoiding the necessity of immediate and small payments; but several complications of a legal nature are introduced as regards the relationship existing between the insurer, the insured and the broker.

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* Hurd, *Marine Insurance*, p. 36.

So far as the insured is concerned, his position is secure and clear. If he pays the premium directly to the insurer, no complication is involved. If he pays it to the broker, where one is employed, the acknowledgement in the policy that the premium has been received protects him. The insurance company or insurer has no right to sue the insured for the premium in case the broker has not paid the premium to it or him. The moment the insured pays the premium to the broker, he is safe. It is only when he has not made the payment that he is liable to be sued by the broker and not by the insurer. As to the insurer, he must look to the broker for the payment of the premium. According to Section 53 of the English Marine Insurance Act, "Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses or in respect of returnable premium."

It would appear that the position of the broker is rather insecure; for in case the insured does not pay him the premium, the former will still remain fully covered leaving the bonus of payment on the latter. The law has, however, given him adequate protection and provided that he has a lien on the policy for the premium payable in respect of the particular policy in question; and he may hold the policy as security unless the premium is paid to him. As a matter of fact, if the relationship between an insured and a broker are

confined to a single policy only but there is a regular series of business transactions of this nature, then the broker has a lien on the policy for the balance due to him in respect of any marine insurance transaction whatsoever.

Obviously then "the acknowledgement in the policy of the receipt of the premium is only conclusive as between the insurer and the assured; it is not conclusive as between the insurer and the broker, and the broker remains liable to the insurer for the premium until it is actually paid."

Return of Premium.

Ordinarily the payment of the premium and the attachment of the risk to the subject-matter of insurance are concurrent occurrences and complete the contract of marine insurance; and the premium is not returnable thereafter. But there are certain circumstances in which provision is made for the complete or partial return of premium.

1. *Return acording to Policy Conditions.*—Sometimes a standard premium is paid and it is agreed upon that if certain events take place, adjustments will be made in the premium paid on a pre-determined basis. The events contemplated are the failure to ship before a certain date after which sea may become stormy or otherwise dangerous, special packing reducing the risk for damage, and so forth.

2. *Return according to Equity.*—Principle of equity sometimes requires the underwriters to return

a part of the premium paid. The following important examples illustrate this point:

(a) In the case of a *floating policy,* insurance to the full available extent might not have been declared and the insured might have no further declarable interests under the policy. In such a case the balance of the policy amount remaining undeclared is dispensed with and a proportionate part of the premium paid is returned.

(b) *If the insured fails to declare a material fact* by innocent mistake or unintentionally misrepresents, the underwriers have a right to avoid the contract by returning the premium. It must, however, be remembered that if the contract is vitiated by fraud or illegality on the part of the insured, the insurer is not liable to return the premium and can cancel the contract without doing so.

(c) *Unreasonable delay in commencing the voyage* sometimes entitles the underwriters to cancel the contract by returning the premium.

(d) When insurance has been taken for each of the *several stages of the voyage* separately and some stages are not completed, the premiums referring to the uncompleted stages are returnable.

3. *Return in the case of Over-insurance by Double Insurance.*—When a subject-matter is over-insured by double insurance, a proportionate part of the premium is returnable. Over-insurance in this sense is defined in law as follows: Where two or more policies are effected by or on behalf of the insured on the same adventure and interest or any part thereof and the sums insured exceed the indemnity allowed by law, the insured is said to be over-insured by double insurance. In such a case a proportionate part of the several premiums is returnable, provided that if the policies are effected at different times and any earlier policy has at any time borne the entire risk or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy and when the double insurance is effected knowingly, no premium is returnable.

Where the insured is over-insured by double insurance.

(a) the insured, unless the policy otherwise provides, may claim payment from the insurer in such order as he may think fit, provided that he is not entitled to accept any sum in excess of the idemnity allowed by this Act;

(b) the insured must give credit as against the valuation, where the policy under which the insured claims is a valued policy, for any sum received by him in any other

policy without regard to the actual value of the subject-matter insured;

(c) the insured must give credit as against the full insurable value, where the policy, under which the insured claims, is an unvalued policy, for any sum received by him under any other policy;

(d) the insured is deemed to hold any sum received by him in excess of the indemnity allowed by this Act in trust for the insurers according to their right of contribution among themselves.

Warranties.

A marine insurance policy contains some warranties. A warranty, as has already been observed, is an undertaking on the part of the insured that a certain thing shall or shall not be done in connection with the contract of insurance or that some condition shall be fulfilled; or his affirmation or negation to the existence of a particular state of facts.

A warranty must be strictly complied with, whether it is material to the risk or not. The breach of a warranty in contracts in general, simply gives right to a claim for damages from the party responsible for the breach; it does not render them void. But in marine insurance, the breach of a warranty makes the contract void and discharges the insurer from the liability as from the date of the breach.

Warranties in connection with marine insurance may be divided into two classes: (i) implied warranties, and (ii) express warranties. Implied warranies are not expressly mentioned in the marine insurance policy but they are presumed to be in existence. These implied warranties are the seaworthiness of the ship, legality of the venture, and non-deviation. They have already been discussed in the preceding pages. Unlike implied warranties, an express warranty is definitely expressed or incorporated in the policy and derives its name from this fact. The following are the examples of express warranties:

1. Warranty as to the neutrality of ship and cargo;
2. Warranty to sail on or before a certain date;
3. Warranty not to sail within certain specified limits; and
4. Warranty of being free from capture and seizure.

Borrowings by the Captain.

The captain of the ship is sometimes forced by pressure of circumstances to borrow money at a foreign port. Captain of the ship is an agent of the ship-owner and it is his duty to see that should he be disabled from communicating with his principal, every step necessary for the safety of the ship and the cargo and for the successful prosecution of the voyage is duly taken. If and when he runs short of money and finds himself

unable to get the amount from his principal, it is reasonable for him to borrow the money. In case the credit of the ship-owner and the captain is high, money can be borrowed without any security, but usually the lender requires some security: the security of the ship or the cargo or both. For these purposes the captain of the ship executes certain bonds which are known as bottomry and respondentia bonds. It should, however, be noted that in these days of rapid means of communication and remittance, cases when the captain is cut off from the principal and is forced to borrow on the security of the ship or the cargo or both are very rare. They simply remind of the olden days when facilities for communication and remittance were not always available.

Bottomry.

When the captain has to borrow money on the security of the ship, he has to execute a *Bottomry Bond*. It derives this name from the bottom or the keel of the ship which signifies the entire ship. Sometimes the cargo and the freight are also offered as security together with the ship, though it is not always so. The captain has to pledge his personal credit as well, thus becoming liable for the debt personally.

There are three important essentials of the bottomry bond, which are discussed below:

1. That the money was borrowed only when it was impossible to continue the voyage without borrowing it;

2. That no other means of borrowing money was available than the execution .of the bottomry bond; and

3. That the amount borrowed is the minimum that is necessary to reach destination.

The most important characteristic of the borrowing through bottomry bond is that it includes insurance in the process. The repayment of the debt is conditional on the arrival of the ship at the port of destination. If the ship does not reach the port of destination, the money borrowed under the bottomry bond need not be repaid. The state in which the ship reaches the port of destination is not at all material; her condition may be good or damaged but the very fact that she has reached the port of destination makes the debt repayable. In other words, it is the total loss alone that exempt the borrower from repaying the debt and not the partial loss.

Another remarkable feature of the bottomry bond is that in case the captain borrows the money at various ports during the course of the voyage by executing bottomry bonds, the last lender gets the first claim and the first lender the last claim. For instance, if a ship going from Bombay to London has to borrow money first at Aden, then at Port Said and finally at Gibraltar, the Gibraltar, lender will have the first claim and the Aden lender the last claim. This principle is based on the fact that were the last lender not to lend money, the ship could not have concluded the voyage and the first

lender could not have got anything; consequently, the last lender should have a priority over the first lender.

Respondentia.

Sometimes the captain is not required to offer the ship as security; he simply offers cargo as security and borrows money by executing *Respondentia Bond*. The validity of a respondentia bond depends upon the satisfaction of the following three requirements:

1. The money borrowed should be exclusively for the benefit of the cargo.
2. No other means of obtaining money short of selling the cargo should be available.
3. The captain should try to obtain the consent of the cargo-owners, if possible.

Respondentia bond also combines the element of insurance with the element of lending. The amount becomes repayable only on the condition that the ship reaches the port of destination. Should the ship fail to arrive at the destined port, the debt becomes a bad debt and need not be repaid. However, such bonds were common in olden days but rapid means of communication and remittance have made them obsolete now.

PART IV

FIRE INSURANCE

CHAPTER 18

INTRODUCTORY

Fire is a great friend of humanity and has played a definite role in the furtherance of human civilisation and progress. In fact, the discovery of fire must have been a great step onwards on the road to civilization. But this friendly force has a sinister aspect as well inasmuch as it destroys valuable property of considerable magnitude every year. Since the person on whom the loss caused by fire falls may be financially crippled as a result of it, the method of fire insurance has been devised as a means of protection against such a calamity. The owner of property liable to catch fire has to pay only a small premium to the insurance company, in return of which the latter undertakes to indemnify the insured against any loss suffered by the insured property to the maximum limit of the insured amount.

Fire insurance may be defined as a *contract whereby one party undertakes, in exchange for a premium, to indemnify the other against a loss or damage caused to specified property by fire during a particular period to the extent of a definite sum.* The liability of the insured is to pay a definite premium; in exchange for this premium the insurance company undertakes to make good the loss caused to the insured property within a specified period to the maximum limit of the insured amount.

Origin of Fire Insurance.

Fire insurance made its appearance only when commerce became quite extensive, when need was felt for some sort of security against loss caused by fire. The real fillip to this business was given by the Great Fire of London. After the said fire, several pioneers came on the scene and began to issue fire insurance policies. In those times there was no past experience to profit by and the pioneers had to work, more or less, on their guesses; but it is remarkable that some of the rates fixed by them are considered to be the standard rates even today. In the course of time, however, experience accumulated and relevant data began to increase. At the same time the decisions of the law-courts helped in the evolution of a definite and scientific form of fire insurance. Thus, by slow degrees, fire insurance was put on a scientific basis; and today, though it is not as precise as life insurance, it can by no means be regarded as purely a guess-work of certain speculators.

In our country, fire insurance is not very popular and protection against it is not very generally sought. Bombay probably is the most fire-insurance-minded, where the inflammable character of the old buildings is partly to account for this popularity. Most of the fire insurance business is controlled and monopolised by foreign insurance companies, though Indian enterprise has begun to assert itself.

Functions of Fire Insurance.

It will be interesting to discuss the true functions

of fire insurance. Since insurance is simply a co-operative device by which the loss falling on a certain person is distributed in easy sums over all the members of a group, the only function that fire insurance performs is to distribute the loss by fire falling upon a single individual over a large number of individuals federated together co-operatively by the bonds of insurance.

Sometimes it is said that so long as there is a fire insurance policy, nobody suffers a loss as a result of fire. This statement does not take a correct view of the functions of fire insurance. Fire insurance cannot prevent fire from taking place and from doing the harm which it usually does. It simply distributes the loss that is inflicted by fire.

So far as the society is concerned, it suffers a loss whenever a fire takes place and money, material and labour represented by a property destroyed are lost to it. Fire insurance does not prevent the occurrence of this loss. From the point of view of the members of the insurance group, it would be appreciated that while fire insurance protects every one of them from bearing a heavy loss caused by fire single-handed; it at the same time imposes upon them a certain definite loss of money which is represented by the fire insurance premiums that they have to pay. This is their share of loss caused by fire. Even from the point of view of the insured himself, it would be wrong to say that fire insurance prevents the occurrence of loss. As a matter of fact, it is the insured on whom the first impact of the loss falls; apart from this, the premium that he pays is no-

thing but a fraction of the total loss caused by the fire. From nobody's point of view it can be said with any show of propriety that fire insurance prevents the occurrence of losses caused by fire.

Moral Risk in Fire Insurance.

Fire insurance provides protection to the property against the occurrence of fire, an unavoidable *physical hazard*. But it also involves a great *moral risk,* namely, the destruction of property deliberately out of dishonest motives. The existence of this moral risk is the peculiar feature of fire insurance. In no other type of insurance is the element of moral hazard so prominent and common.

In life insurance the moral risk is very little. Nobody can deliberately attain a particular age when the policy would become mature; that will be impossible. Again, who will like to die in order to make the policy a claim? Life is too precious for such a sacrifice. There are some cases of suicide in life insurance, but they are very few. The moral risk in life insurance is almost negligible. Similarly, in marine insurance, the moral risk is not great inasmuch as the shipper of the cargo cannot possibly manage to destroy it while it is on board the ship. But in fire insurance the possibility of deliberately setting the property on fire is sometimes quite considerable and the motive for such an action quite strong. A very common instance of moral hazard is the deliberate destruction of one's own property by fire, which is known as *incendiarism*. The evident

motive to this is to realise the insured amount from the insurance company. The definite increase in fire losses during times of depression and the definite decline in such losses during times of trade boom, which facts are clearly revealed by satistics, are attributable to an increase and decrease respectively in the cases of incendiarism. Sometimes the property is set on fire, not by the owner himself, but by some other person. This is known as *arson* and is practised either out of malicious motive or political or religious ambitions. Some persons burn some property with the idea of earning a reward by giving the informaion of a fire having broken out or by assisting in extinguishing it.

Hazards in Fire Insurance.

The hazards which call for fire insurance may then be put under two categories: (i) physical hazards; and (ii) moral hazards.

The physical hazards of a fire may occur due to the inflammable nature of the goods or the buildings, defective system of heating, lack of fire extinguishing appliances, etc. We have written something about moral hazards above. Incendiarism and arson have already been pointed out in this connection. With them may be listed what is known as *passive dishonesty* of the insured by which is meant that he does not take sufficient precautions and does not maintain adequate appliances for extinguishing fire when it takes place, or does not make their proper use. Rapacity in claims and carelessness without criminal also fall in the same class.

Fire Insurance and Life Insurance.

1. A contract of fire insurance is a contract of indemnity; wheras a contract of life insurance is not a contract of indemnity. Consequently, in the case of the former it is only the actual market value of the goods or property destroyed by fire, which can be realised from the insurance company; but in the case of the latter the whole of the insured amount becomes a claim on the maturity of the policy.

2. Fire insurance provides for the element of protection only, while life insurance combines both the elements of protection and investment.

3. The period for which a fire insurance policy is usually issued varies from 10 days to 12 months; but a life insurance policy covers a longer duration. A fire insurance policy can, of course, be renewed after its expiry on the payment of the necessary premium.

4. The nature of risks in fire insurance is extremely varying and as a consequent the classification of these risks is very elaborate and complex and the fire insurance premiums, therefore, greatly vary. In the case of life insurance the same fixed rate of premium holds good for every life. It is only for an under-average life that an extra premium is charged.

5. A fire insurance policy does not acquire any surrender value while a life insurance policy does acquire such a value after two or three years of its existence.

6. The presence of insurable interest in the case of a life insurance policy is essential only at the time

of the issue of the policy; but in the case of a fire insurance policy, it must be present both when the policy is issued and when it becomes a claim, *i.e.,* on the happening of the event insured against. A contract of fire insurance is regarded as a personal contract because the degree of risk is very great and as considerable protection is granted on payment of a very small premium. The assignment of a fire insurance policy, therefore, can be made only with the permission of the insurance company.

Fire Insurance and Marine Insurance.

There is a good deal of similarity between fire and marine insurances, for both are contracts of indemnity. But there are certain glaring differences between the two. Firstly, under fire insurance policy, only the actual market value of the property destroyed by fire can generally be claimed: it does not provide for any profit. But in the case of marine insurance, not only is the cost of goods destroyed but also the shipping charges together with a 10 to 15 per cent margin of anticipated profits are payable by the insurance company. Secondly, the insurable interest in the case of a fire policy must be present both at the time the policy is issued and when the loss takes places; but the marine insurance policy requires its presence only at the time of the occurrence of the loss.

CHAPTER 19

ESSENTIAL PRINCIPLES OF FIRE INSURANCE

The leading principles by which the practice of fire insurance is governed, are three in number, namely:

(1) Principle of Indemnity;
(2) Principle of Good Faith; and
(3) Principle of Insurable Interest.

Principle of Indemnity.

The principle of indemnity is the most important principle of fire insurance contract. Such a contract is really known as a contract of indemnity. All the contracts of fire insurance are based on the principle of indemnity whereby the insurer undertakes to place the insured in the event of loss or damage to the property insured, by monetary payment or otherwise, in the same position in which he was before the fire—neither better nor worse but the same. Lord Chief Justice Mansfield, whose contribution to insurance legislation is remarkable and great, rightly observed in the course of a judgment that it was very wisely established that a man should not recover more than he had lost as this rule was calculated to prevent fraud, lest the temptation of gain should occasion unfair and wilful losses. Brett L. J., once expressed himself even more forcefully as follows:

"The very foundation, in my opinion, of every rule which has been applied to insurance law is this, namely, that the contract of insurance contained in a marine or fire policy is a contract of indemnity, and of indemnity only, and that this contract means that the assured, in case of a loss against which the policy has been made, shall be fully indemnified. This is the fundamental principle of insurance, and if ever a proposition is brought forward which is at variance with it—that is to say, which either will prevent the assured from obtaining a full indemnity, or which will give to the assured more than a full indemnity—the proposition must certainly be wrong."*

If the insured is permitted to make profit out of the occurrence of fire, two evils will result. Firstly, there will be a temptation to the insured to set the property on fire either actively or passively. This would involve much loss, besides being dangerous to adjacent properties as well as to human life. It is "against public policy." Secondly, it will also injure the offender's fellow insured as it would tend, by undue depletion of the fund, to raise the rates of premiums, which would be inimical to the interest of the public at large. Evidently, this principle should be regarded as the sheet-anchor of the business of fire insurance.

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* *Castellain* v. *Preston* (1883).

The amount for which a fire insurance policy is taken is a definite and fixed sum. This, it should be noted, is not necessarily the measure of loss or indemnity. This sum simply fixes the limit up to which a claim can be made. The amount that can actually be claimed from a fire insurance company in case of loss, is the market value of the property at the time of destruction, provided it does not exceed the insured amount. For instance, if a property valued at Rs. 16,000 but insured for Rs. 8,000 only, is totally damaged by fire, the insured can claim Rs. 8,000 only from the insurance company. In case the loss comes to Rs. 12,000 or Rs. 8,000, he can still claim only Rs. 8,000 in either case.* A valued policy is, however, an exception to this rule. In the case of a valued policy, the value of the property is agreed upon in advance and this is the amount which can be realised in case of total loss of the property insured.

The conception of the term "indemnity" has been broadened in recent times. Formerly it was restricted to material indemnity only and covered the loss of only material, tangible property. But a loss by fire also involves certain intangible loss, as for instance, the loss of profit due to stoppage of work, loss of salaries and interest due to the same reason, and so forth; and the insured persons are generally keen to be protected against such losess as well. The conception of idem-

* It is assumed that the policy is unvalued and does not contain an average clause.

nity has, therefore, been extended beyond material indemnity in recent times and such losses are now covered by fire insurance policies. The lack of understanding of the true cause of this recent development sometimes leads to the wrong charge that modern fire insurnace practices are calculated to undermine the principle of indemnity.

Principle of Good Faith.

The principle of good faith binds *both* the parties (*i.e.*, the insurer as well as the insured) and requires each of them to maintain utmost good faith and to communicate all the material facts within his knowledge to the other. But this applies with special force to the insured who is in possession of most of the relevant information by virtue of his being the owner of the subject-matter of insurance. The insurer usually obtains information regarding the risk from the statements made by the proposer in the Proposal Form. It is on the basis of the facts supplied by him in the proposal form that the insurance company fixes the premium and enters into the contract. It is, therefore, absolutely essential for him to make a clean breast of all the material facts, *e.g.*, the materials of which the building is constructed, the fire extinguishers and other similar appliances kept ready for use, the nature of the things kept in the building, the nature of the adjoining buildings and their use, etc. Any material concealment on the part of the insured will vitiate the contract. which may, then, be avoided by the other party.

In the case of ordinary risks, the statements made by the insured in the proposal form are considered to be quite sufficient for a correct estimation of the risk; but in other complicated cases, the insurer's surveyor makes an examination of the property. Any facts open to his observations are presumed to have been disclosed. But all other facts known to the proposer and material in character, must be fully disclosed by the insured. It will be no use pleading later that he was unaware that a particular fact was material; an obvious reason for this is that if it were not so, such a plea would form an easy way of evasion from the responsibility of full disclosure. The conduct of fire insurance business without such a safeguard, would be practically impossible or would be carried on only at greatly increased rates.

The observance of good faith is necessary throughout the term of the contract. Any change in the nature of the risk during the currency of the policy must be communicated to the insurance company. The insured and his agent are in duty bound even to take such steps as may be reasonable for the purpose of averting or minimising a loss. Any contrary behaviour on the part of the insured will be considered to be a breach of good faith. It would be wrong to imagine that the necessity of good faith ends with the statement of all material facts in the proposal form.

Principle of Insurable Interest.

The principle of insurable interest is, indeed, a

logical sequence to the principle of indemnity. A person is said to have an insurable interest in the subject-matter of insurance when he stands in such a relation to it as to benefit by its existence or be prejudiced by its loss; so that if this condition is not fulfilled, he does not sustain any loss on the damage or destruction of the subject-matter and any payment or compensation to him would be contrary to indemnity.*

The insured must have an insurable interest in the subject-matter of insurance, otherwise the contract will be a mere gambling contract which is void at law. Such an interest may arise legally, *i.e.,* by virtue of legal ownership; or it may arise equitably, *i.e.,* by virtue of some other pecuniary relationship falling short of ownership, like the lending of money against the security of a property.† Thus a person can insure his own property. A creditor may insure a house over which he has a mortgage. A warehouseman may insure his customer's goods. A trustee may insure the goods held by him in trust. An agent may insure the goods of his principal. An insurance company may re-insure the property insured with it.

The insured must have insurable interest both when the policy is issued as well as when the loss takes place. The strictness of this provision is explained by the fact that fire insurance covers not only a physical hazard but also a moral hazard.

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* Godwin, *Principles and Practice of Fire Insurance.*

† See Welford and Ottar Barry, *Law of Fire Insurance.*

CHAPTER 20

THE CONTRACT OF FIRE INSURANCE

In olden times fire insurance, like other types of insurance, was effected voluntarily and co-operatively by persons exposed to the risk in question; but now this form of insurance has become almost extinct. Now-a-days insurance companies have been established all over the world, which sell insurance to those who seek for protection, just as a grocer sells provisions and a bookseller, books. Insurance protection can be had these days by means of a contract entered into between the insurer and the insured.

Fire insurance contract may be defined as a contract whereby the insurer undertakes to indemnify the insured in respect of a loss or damage caused by fire to the insured property in the manner and to the extent agreed upon between them. The party to the contract of fire insurance who undertakes to indemnify the other party is known as the *insurer;* whereas the party to the contract of fire insurance whom the insurer undertakes to indemnify is known as the *insured.*

Scope of Fire Insurance Policy.

It is important to enquire as to what is the exact scope of a fire insurance policy. Such a policy grants protection against fire and it is, therefore, necessary for the present purpose to focus attention on what the term *fire* implies. Fire, in the present context consists of two essentials. There must be actual fire or igni-

tion. According to Byles, J., "Loss or damage occasioned by fire means loss or damage either by the ignition of the article consumed or by ignition of part of the premises where the article is: in the one case there is a loss, in the other a damage, occasioned by fire."* If the property is destroyed or damaged by a process resembling fire but not involving actual ignition, it will not constitute fire. For instance, certain chemical actions may destroy certain property in the same manner in which fire does, but since they do not involve actual ignition, their action is not identified as fire. Again, if the loss is occasioned by lightning which does not cause any ignition, it will not amount to fire; but should it be associated with ignition, it would, of course, constitute fire and a claim under the fire insurance policy will stand. Secondly, the fire must be accidental. The policy protects the insured only against accidental loss caused by fire. As Lord Herschell once aptly observed, "There must be some casualty, something which could not be foreseen as one of the necessary incidents of the adventure. The purpose of the policy is to secure an indemnity against accident which *may* happen, not against events which *must* happen."†

Offer and Proposal Form.

The necessary elements of all contracts are offer and acceptance. When one party makes an offer and the other accepts it, the contract becomes binding. In

* *Everett* v. *London Assurance* (1865).
† Italics ours.

fire insurance though either the insured or the insurer may be the proposer, it is usual for the intending insured to make the offer. The insured is free to make a proposal either verbally or in writing. In the case of small properties and buildings meant for dwelling purposes, where the degree of risk involved is little, the proposal may even be verbal; but ordinarily the intending insured makes the proposal in writing by filling in the *Proposal Form* which is obtainable from the insurance company without any payment. The proposal form contains several questions, answers to which are written by the proposer in the blank space provided therefor. The particulars to be disclosed vary with the character of the insurance proposed. Information regarding the property to be insured, of the sum for which the insurance is sought, certain particulars regarding the insured and similar other things have to be disclosed in the proposal form.

A proposal form furnishes the basis of the contract and absolute good faith must be maintained in filling it up. No material fact, that is, a fact giving accurate estimate of the risk and liable to infiuence the judgment of the insurer, should be concealed. The full disclosure and correct description of every material fact are absolutely essential. The proposer should also take care in giving answers in a language which admits of only one interpretation.

When writing down the amount for which the insurance is sought, it should be clearly borne in mind that in case of loss the amount that can be realised is

the actual market value of the property destroyed. The insured should, therefore, take a policy for the actual market value of the property, keeping a fair margin for a likely appreciation in its market value. It would not be advisable for him to take a policy for a larger or lower sum than this.

Evidence of Respectability.

Fire insurance, as we have already observed, involves great moral risk. Since by setting his property on fire the insured can realise the insured amount from the insurer, incendiarism is at times a great temptation to the former. Arson is also sometimes practised by third parties for a variety of reasons. This second factor of arson cannot, however, be taken into account by the insurance company in its efforts to reduce the chance of loss. But it certainly tries to ascertain that the insurer himself is a man of honesty and integrity. For this purpose, the insurance company requests him to furnish some reasonable evidence of his respectability. In case the proposer is known to the insurance company, or he is of good standing, this formality is dropped.

Survey of the Property.

The proposer sends the proposal form after duly filling it to the insurance company either directly or through an agent. If the information revealed by this form is satisfactory, the company sends its surveyor to survey the property in question. Generally, if the property is small, as in the case of the small shops or dwelling-houses, the risk involved is simple, the insur-

ance company does not think it worth while to have the survey made; and if it is made at all, it is not very minute. But in the case of larger risks, depending upon various complicated factors, expert surveyors are deputed to carefully inspect the property in question, and to estimate the degree of risk involved. It is on the basis of this report that the insurance company accepts or rejects the proposal; and in the former case, quotes the rate of premium.

Acceptance of the Proposal.

If the insurance company accepts the risk, it communicates the rate of premium it will charge for the proposed insurance to the proposer and requests him to pay it. It is only after he pays the first premium that the contract is concluded and becomes binding. In case the insurance company issues the policy before the payment of the premium, the contract is deemed to have been concluded when such a policy is issued.*

Cover Note.

As soon as the insured pays the first premium, the insurance company forthwith issues a cover note which covers the property pending the preparation of the fire insurance policy. A cover note protects the policy-holder as much as the policy does. The only reason why a cover note is issued is that the preparation of the policy takes some time and can be delivered only later, prior to which the cover note is issued in its place.

* Sanford Cole, *Law of Fire Insurance*.

Fire Insurance Policy.

After the expiry of some time from the date of the issue of the cover note, the policy is sent to the insured. The policy embodies the terms and conditions on which the contract is entered into. No statutory or formal document is, however, necessary to make a contract of insurance valid or binding. "If a contract of insurance is agreed by any binding means, that is a policy for all intents and purposes." But the Fire Offices Commitee of England has prepared a fire insurance policy which is known as the Standard Policy. This policy has been fairly widely adopted. At its top, there is a picture, list of directors and things of that description. Below are stated things like the description of the subject-matter, sum insured, premiums, etc. On the back of the policy are printed the various terms and conditions on which the contract is entered into. These terms and conditions are very important and later on we will study them in great detail.*

Renewal of Fire Insurance Policy.

Usually fire insurance policies are taken for a period of one year. It is only in rare cases that policies for a shorter or longer periods are taken. Policies taken for less than one year are known as *short-period policies* and those of longer duration than one year are known as *long-period policies*. But these are more of exceptions than general rule. Each fire insurance policy is usually renewable.

* See chapter 21, *poste*.

Some time before the expiration of the policy the insurance company issues a renewal notice whereby it asks the insured to renew the policy for a further period. It also allows a period of grace of 15 days to the insured within which to effect the renewal. The giving of the notice of the renewal and the allowance of the days of grace are not compulsory; but the practice is universal. If a fire takes place during the days of grace and prior to the renewal of the policy and the insured property is destroyed or damaged as a result thereof, the insurance company will have to make good the loss despite the fact that the renewal premium has not yet been paid. But if there is definite evidence that the insured had no idea or intention to renew the policy, the insurer will be free from his liability in such a case.

Renewal is equivalent to a fresh contract. Consequently the insured must make full disclosure of all material facts and if any change has taken place in the nature of the risk, he must disclose it frankly. The insurer, if he likes, can also revise his rates of premium and any other change in the terms and conditions governing the contract.

Cancellation of Fire Insurance Policy.

A fire insurance policy may be cancelled for a variety of reasons. The obvious case is the one where the policy has expired and not been renewed. The fire insurance is automatically cancelled in such a case. Sometimes it also happens that the insurance company

does not want to renew the policy for some reason or the other. In such a case it is usual for the company to give an intimation to this effect to the insured a week or so before the expiration of the policy so that the insured may make arrangement with some other company and may be debarred from claiming the advantage of the days of grace.

The insurance company cannot cancel a policy during the current term. If, however, some change in the subject-matter of insurance, or in the circumstances effecting it, has been made without the approval of the insurer, or some such thing has taken place, the insurer is at liberty to avoid the contract and it is only in such cases that he can cancel a policy during its current term. But in the absence of any such case there is no option for him but to continue to afford protection.

More Than One Fire.

Sometimes more than one fire take place during the currency of a single policy. When the fist fire takes place and the loss is made good by the insurance company, the amount of the policy is reduced by the amount so paid by the company. If another fire takes place during the currency of the same policy, the insured cannot realise anything more than the balance left. But he can, if he likes, on the happening of the first loss, obtain full protection by paying further premium on a *pro rata* basis. The insurer cannot, however, be legally forced to do so.

Tariff and Non-Tariff Offices.

Fire insurance companies form fire insurance associations with a view to prevent undue competition among themselves, which results in cutting down the rates of premiums to a dangerously low level. Such an association is known as a *Tariff Association*. It lays down the rates of premiums to be charged on important varieties of risks and requires its members to charge the rates fixed by it. Thus it secures uniformity of rates, prevents cut-throat competition and keeps up the rates to the proper level. All the officers which are members of the Tariff Association are known as Tariff Offices. Most of the fire offices are Traiff Offices.*

All the fire offices do not, however, join the Tariff Association. Those beyond the scope of the Association are called Non-Tariff Offices. They are not bound down by the rates of the Association; and in actual practice charge any rates, high or low, as they please. Generally certain young and new offices, which want to benefit by the high rates of premium maintained by tariff offices and which hope to get good business by reducing their rates a little below the tariff rates but without injuring their safety, do not join the Tariff Association. Such offices may, however, adopt a dangerous policy of cutting down rates below the economic level; hence it is not considered very safe to purchase a policy from them. That is why they are few in number.

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* See Brooke, *Fire Insurance—Principles and Practice.*

CHAPTER 21

PHRASEOLOGY OF FIRE INSURANCE POLICY

Life insurance and marine insurance are governed by statute or written law. Consequently, the study of these subjects is free from ambiguity and much difficulty. But there is no such law relating to fire insurance. Under the circumstances, the contracts of fire insurance are governed by the unwritten law known as the Common Law and current trade usages and practice. In fact, most of the principles governing fire insurance and the practices relating thereto are to be found in the conditions printed at the back of a fire insurance policy.

Form of a Fire Insurance Policy.

Strictly speaking, any document setting forth the contract of fire insurance can be called a fire insurance policy. But historically the actual form of a fire policy has undergone several changes. In the days of yore a fire policy contained very few conditions; but gradually the number of conditions began to increase and towards the end of the 19th century it became almost impossible for a person to understand the implications of the numerous conditions included in such a policy. A reaction, however, soon appeared on the scene, and the number of conditions and length of each of them, began to be cut down. And some insurance companies issued

the so-called *conditionless policy*. This term is rather a misnomer for no policy can in fact be without any condition. But it shows the magnitude of the botheration created to the insured by lengthy policies and the strength of reaction to it. Gradually, however, insurance companies got together and the Fire Offices Committee pressed their genius to service. The result was the present form of the policy which is known as the standard policy. It is this standard policy which is generally used by insurance companies. The fire insurance policy issued by the members of the Lloyd's is similar to the standard policy in general, though it is differently expressed. The printed conditions of the standard policy represent most of the law and practice governing fire insurance.

Printed Conditions of Standard Policy.

The importance of the printed conditions of the standard policy can, therefore, be well appreciated by the reader. These conditions are eleven in number and are as follows:

1. Misdescription
2. Alteration
3. Exclusions
4. Claims
5. Fraud
6. Reinstatement
7. Company's rights after fire
8. Contribution and average
9. Subrogation
10. Warranties
11. Arbitration

Mr. Godwin has classified these conditions as follows:*

The necessity for "the utmost good faith"	*i.* & *ii.*	Stipulation for disclosure of all material facts at inception of contract and of any material alterations after the risk has been undertaken and for the insurers consent to such alterations.
	v.	Fraud will 'avoid' the policy.
The principle of indemnity.	*vi.*	insurers' option of reinstatement in lieu of compensation in cash.
	ix.	Insurers' right of subrogation.
Personal nature of contract.	*ii.*	Policy not assignable without insurers' consent.
Principle of contribution amongst co-insurers	*viii.*	Provision for (*a*) limitation of insurers' liability to ratable share of total insurance, (*b*) advantage of 'Average' if that advantage already secured to co-insurer.
Arising out of anomaly in law as to warranties	*x.*	Provision for validity of any warranties in the policy during its currency.
Limitations of the contract.	*iii.*	Exceptions from contract of (i) certain things; (ii) certain causes of fire; (iii) certain perils cognate to fire or resulting from it.
Procedure in event of loss.	*iv.*	Stipulations as to making claims.
	vii.	Insurers' right of entry, investigation and possession of salvage. Denial of any right of abandonment to the insured.
	xi.	Reference of differences to arbitration.

We shall study these conditions one by one.

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* Godwin, *Principles and Practice of Fire Insurance.*

1. Disclosure of Material Facts.

By this condition the insurance company makes the policy voidable in case the insured misrepresents, wrongly describes or fails to disclose any material fact. The condition runs as follows:

> "This policy shall be voidable in the event of misrepresentation, misdescription or non-disclosure in any material particular."

We have already described in a preceding chapter* that the contract of insurance is a contract of absolute good faith and each party must make full disclosure of all the material facts within his knowledge and that there should be no misdescription or misrepresentation. We also pointed out that special care should be taken by the insured in filling in the proposal form. The proposal form contains some vital questions of the following type: Have you ever sustained a loss? Has any company refused your claim? Has any company declined to renew your insurance? Answers to such questions must be correctly given by the insured. In case of any misrepresentation, misdescription or non-disclosure in any such matter, the insurance company would surely avoid the contract.

This condition appears to be rather useless inasmuch as the Common Law presumes its existence. It is, therefore, generally thought that the only reason of inserting it in the standard policy is to bring this fact to the notice of the insured. But as a matter of fact,

* See chapter 19, *ante*.

the legal opinion is not quite unanimous in the interpretation of the Common Law on this point. Insurance companies, therefore, find it safer to make the point definite by inserting this condition.

It must not be presumed that the insurance company would avoid the contract on the slightest pretext under this term. In practice, insurers do not take advantage of this condition so long as the matter is unimportant. But when they find that a misrepresentation or misdescription or non-disclosure has seriously affected their estimate and acceptance of the risk, they may avoid the policy on this score.

2. Alteration.

The condition is expressed as follows:

"This policy shall be avoided with respect to any item thereof in regard to which there be any alteration after the commencement of this insurance.

(i) by removal; or

(ii) whereby the risk of destruction or damage is increased; or

(*iii*) whereby the insured's interest ceases except by will or operation of law;

unless such alteration be admitted by Memorandum signed by or on behalf of the company."

By virtue of this condition, the insurer disallows any material alteration after the issue of the policy

without his permission. Such an alteration may take place by removal; for instance, if the insured replaces iron railings by bales of paper without the permission of the insurance company, the risk is increased. Such a material alteration entitles the company to avoid the contract. Material alteration may also take place in a manner which increases the risk as would happen when the insured sends furniture from his office to the cabinet factory for repairs where the risk is several times increased. Such an action will be valid only when the insurance company gives permission to do so. Finally, the policy is not assignable at will. As an insurance contract is a personal contract, such an assignment is invalid under the Common Law unless the consent of the insurer has been obtained. But if the assignment is made under a will or by the operation of law, such an assignment is deemed to be valid. In practice, the insurance company is quite willing to give its consent to an assignment. It is only when the person acquiring interest in the property is unfavourably known to the insurance company that it declines to agree to the proposed assignment.

Generally speaking, insurance companies try to accommodate the insured as much as possible; and so long as the risk is not materially increased, they very willingly give their consent when applied for. When they think that the enforcement of the condition will be a great handicap to the insured, they are still more lenient in this respect. If the alteration is of a serious nature and the risk is considerably increased, the in-

surance company may give its approval after charging an extra premium. For as the risk run after this alteration is quite different from the one which was originally agreed upon to be run, there takes place a novation of the contract and the insurance company is at liberty to increase the rate. It can even refuse insurance if it thinks it proper.

3. Exclusions.

The third condition relates to certain exceptions to the risk assumed by the insurance company. The term states:

"This policy does not cover.

(*a*)	Destruction or damage by explosion (whether the explosion be occasioned by fire or otherwise)	except as stated on the face of the policy.
(*b*)	Goods held in trust or on commission, money, securities, stamps, documents, manuscripts, business books, patterns, models, moulds, plants, designs, explosives	unless specially mentioned as insured by this policy.

This condition makes reference to the description of fire as given on the face of the policy and should be read in conjunction therewith. The following is the said description:

1. Fire (whether resulting from explosion or otherwise) not occasioned by or happening through.

   (a) its own spontaneous fermentation or heating or its undergoing any process involving the application of heat.

(b) earthquake, subterranean fire, riot, civil commotion, foreign enemy, military or usurp power, rebellion or insurrection;

2. Lightning;
3. Explosion of boilers used for domestic purposes only;
4. Explosion in a building not being part of any gas-works, of gas used for domestic purposes or used for lighting or heating the building.

From the above, it is clear that the fire insurance also grants protection against fire and lightning and explosions described in clauses 3 and 4 of the description given on the face of the policy. But if the fire takes place on account of the spontaneous fermentation or heating of the subject-matter, or as a result of any process involving the application of heat or earthquake, riot, etc., etc., the loss will not be made good by the insurance company. Certain articles like goods held in trust, manuscripts, business books, securities, designs, etc., are specifically excluded from the scope of the policy.

It should be remembered that the burden of proving that the subject-matter of insurance has been destroyed by fire or lightning or by the permissible explosions rests on the shoulders of the insured. The burden of showing that the fire is due to an explosion rests on the insurer.*

* See Welford and Otter-Berry, *Law of Fire Insurance*. Also Rowlatt, *Law of Fire Insurance*.

4. Claims.

The fourth condition lays down the directions to the insured which he must follow in the event of a loss taking place with a view to establish his claim. It lays down that on the happening of any destruction or damage the insured shall—

(1) forthwith give notice thereof in writing to the insurance company;

(2) within 30 days, after such destruction or damage, at his own expense deliver to the company a claim in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property destroyed or damaged and of the amount of destruction or damage thereof respectively together with details of any other insurances on any property hereby insured. If the insured wants more time for this purpose, he must obtain the consent of the company in writing;

(3) also give to the company all such proofs and information with respect to the claim as may reasonably be required together with a statutory declaration (if demanded) of the truth of the claim and of any matters connected therewith.

These conditions are very important as no claim under the policy shall be payable unless the terms of this condition have been complied with.

5. Fraud.

This condition simply explains that fraud will avoid the policy. The condition states that

1. If the claim be in any respect fraudulent, or
2. If any fraudulent means or devices be used by the insured, or any one acting on his behalf, to obtain any benefit under this policy, or
3. If any destruction or damage be occasioned by the wilful act or with the connivance of the insured.

all benefits under this policy shall be forfeited.

It is evident from the above that if the insured makes any fraudulent claim, the insured will lose all benefits under the policy. But legal opinion is divided on this point. Some legal authorities maintain that the presentaton of a fraudulent claim does not entitle the insurer to deny the insured all benefits under the policy. But a frudulent claim is an example of utmost bad faith and it is difficult to see how it could be allowed without putting the insured under some handicap.

The conditions also states that if the insured is responsible for incendiarism, or the loss is occasioned by arson committed by his connivance, the insured cannot claim any benefit under the policy.

Though this condition is inserted in the policy, the insurance company does not generally take its stand on this score. In order to be able to do so, the insurance company must prove that fire was the result of incendiarism or arson or the claim is fraudulent—a very difficult thing to prove. Failure to prove this

allegation in a court of law may also lead to serious results. Consequently, when the insurance company finds that the insured is practising some sort of fraud, it tries to avoid the claim on some other technical ground. This is the reason why it is sometimes said that insurance companies try to avoid the claim for merely technical reasons.

6. Reinstatement.

When a claim arises, insurance companies generally pay cash compensation to the insured. In some cases, however, the insurer and the insured do not agree as to the sum of money that should be paid as compensation, when the insurance company agrees or elects to reinstate the property at its own expense. Once the company elects or becomes bound to reinstate or replace the property, it cannot thereafter force the insured to accept cash compensation.

The insured is, however, bound at his own expense to produce and give to the company all such plans, documents, books and information as the company may reasonably require. The company shall not be bound to reinstate exactly or completely but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to spend in respect of any one of the items insured more than the sum insured thereon.

7. Company's Rights after the Fire.

The next condition deals with the rights of a fire insurance company after the property insured by it has

been destroyed or damaged by fire. These rights are as follows:

1. On the happening of any destruction or damage in respect of which a claim is or may be made under this policy, the company and every person authorised by it may enter, take, or keep possession of the building or premises where the destruction or damage has happened. This the company can do without incurring any liability and without diminishing its rghts to rely upon any condition of this policy;

2. It may take possession or may require to be delivered to it any of the property insured; and

3. It may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.

This condition is evidence of the leave and licence of the insured to the company in the above-mentioned directions. If the insured or any one acting on his behalf shall not comply with the requirements of the company or shall hinder or obstruct the company in doing any of the above-mentioned acts, then all the benefits under the policy shall be forfeited. The insured shall not in any case be entitled to abandon any property to the company, whether taken possession of by the company or not.

8. Contribution and Average.

Sometimes a property is insured with two or more insurers. In such a case, if a loss takes place, all of them must share it. This condition deals with the proportions in which the co-insurers will have to contribute. The wordings of the condition relating to contribution are as follows:

> If at the time of any destruction of or damage to any property hereby insured there be any other insurance effected by or on behalf of the insured covering any of the property destroyed or damaged, the liability of the company hereunder shall be limited to its ratable proportion of such destruction or damage.

This term lays down that each co-insurer has to contribute a ratable proportion of destruction or damage. The ratable proportion may be defined to be such a proportion of the loss as the amount of the policy in question bears to the total amount of all the insurance policies taken in respect of the property suffering damage or destruction. The following is the formula according to which the share of loss of each co-insurer is determined:

$$\text{Ratable porportion or share of loss of a co-insurer} = \text{Loss} \times \frac{\text{Amount of the policy issued by him}}{\text{Total amount of all policies issued on the same subject-matter}}$$

Suppose Mr. X insures his house against fire with A and B for Rs. 10,000 and Rs. 6,000 respectively.

After some time the property catches fire and a damage to the extent of Rs. 8,000 takes place. In such a case the contribution of A and B would be as follows:

$$\text{Contribution of A} = \text{Rs. } 8{,}000 \times \frac{10{,}000}{16{,}000} = \text{Rs. } 5{,}000$$

$$\text{Contribution of B} = \text{Rs. } 8{,}000 \times \frac{6{,}000}{16{,}000} = \text{Rs. } 3{,}000$$

The problem of contribution of co-insurers sometimes becomes complicated. When the insurance policies are concurrent and are issued in respect of the same subject-matter, the principle described above will determine the share of loss of each co-insurer, which is simple in its application. But when the policies are only partly concurrent, as will happen in a case where A's policy covers stock as well as utensils while B's policy covers only stock and not utensils, difficulty regarding contribution would arise. The amounts which A and B will have to pay respectively will vary according as B makes good loss on stock first or utensils first. Neither of these two methods is entirely equitable and the practice has grown to take the mean of the two results.

This condition also mentions that

> "If any such other insurance shall be subject to any condition of average, this policy, if not already subject to any condition of average, shall be subject to average in like manner."

The principle of average is meant to penalise under-

insurance by under-payment of compensation. The condition of average states that if the property insured shall at the breaking out of any fire be collectively of greater value than the sum insured, then the insured shall be considered as being his own insurer for the difference and shall bear a ratable share of the loss accordingly. When this condition of average applies to a claim for partial loss under a policy by which property is under-insured, less than the full amount of the loss is recoverable, whereas the full amount might be recovered under a specific policy, not subject to the condition of average either directly or through importation. An illustration will make this principle clear. Suppose a man takes a policy on his shop Rs. 10,000. Subsequently the shop catches fire and a loss of Rs. 8,000 is estimated to have taken place. It is also found out that at the time of loss the value of the shop is Rs. 20,000. In this case the insured is under-insured to the extent of one-half of the value of the property. He can, therefore, recover only one-half of the amount of the loss, *i.e.*, he can realise only Rs. 4,000. In the absence of the average condition he could have realised the entire loss, *viz.*, Rs. 8,000.

Ordinarily, the fire insurance policy is not subject to average unless a clear mention of this is made in it. But if more than one policies have been obtained on the same subject-matter, and either of them is made subject to average, then this condition will apply to all the other policies as well according to the provisions of this clause.

9. Subrogation.

The next condition relates to the doctrine of subrogation and runs as follows:

"Any claimant under this policy shall at the request and at the expense of the company do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by a company for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the company shall or would become entitled or subrogated upon its paying for or making good any destruction or damage under this policy, whether such acts or things shall be or become necessary or required before or after his indemnification by the company."

This condition lays down that when the insurer has compensated the insured in respect of any damage or destruction to the property forming the subject matter of the policy, he steps into the shoes of the insured and can avail himself of any rights and remedies possessed by the insured against the third party in connection with the fire which gave rise to compensation. But it should be remembered that fire insurance company can avail itself of this right only if it has made good the loss. The insured is bound to do and concur in doing and permit to be done all such acts and things as are found necessary by the company for the purposes of enforcing any rights and remedies against a third

party. This is known as the doctrine of subrogation and has already been discussed.

10. Warranties.

The next condition lays down that every warranty to which the property insured or any item thereof is or may be made subject shall from the time the warranty attaches apply and continue to be in force during the whole currency of this policy. Non-compliance of any such waranty, whether it increases the risk or not, shall be a bar to any claim in respect of such property or item. If the policy is renewed, a claim in respect of destruction or damage occurring during the renewal period shall not be barred by reason of warranty not having been complied with at any time before the commencement of such period.

This condition was inserted only after 1901 as a result of an arbitration case. A policy usually contains a list of warranties, some of which are cancelled or some new ones added according to the necessities of each case. When some warranties are deleted, premium is slightly increased and when new conditions are inserted, the premium rate might be decreased.

11. Arbitration.

The arbitration clause comes last and is meant to reduce litigation. It runs as follows:

"All differences arising out of this policy shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference

or, if they cannot agree upon a single arbitrator, to the decision of two arbitraters, one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either parties, or, in case the arbitrators do not agree, to an umpire appointed in writing by the arbitrators before entering upon the reference. The umpire will sit with the arbitrators and preside at the meetings and making of an award shall be a condition precedent to any right of action against the company. Afer the expiration of one year after any destruction or damage, the company shall not be liable in respect of any claim therefor unless such claim was in the meantime referred to the arbitrators."

The use of the following additional clause is optional in policies issued in Northern and Southern Ireland:

"It is hereby declared and agreed that in any arbitration under condition No. 11 of this policy, the costs of the reference and award, but as between partly and party only, shall be in the discretion of the arbitrator or arbitrators or umpire making the award and shall have powers to determine the amount of the costs of reference and award respectively or any part thereof or to direct the sum to be taxed and to direct when and by whom and to whom and in what manner such costs or any part thereof shall be paid."

Memorandum.

The insertion of the following memorandum to the conditions is optional. It relates to the transfer of interest.

"If at the time of destruction or damage of any buildings hereby insured, the insured shall have contracted to sell his interest in such building and the purchase shall not have been but shall be thereafter completed, the purchaser on the completion of the purchase, if and so far as the property is not otherwise insured by or on behalf of the purchaser against such destruction or damage, shall be entitled to the benefit of this policy so far as it relates to such destruction or damage without prejudice to the rights and liabilities of the insured or the company under this policy up to the date of completion."

CHAPTER 22

KINDS OF INSURANCE POLICIES

Fire insurance policies are of various kinds, as the nature of the protection sought for by the insured varies considerably. The important types of fire insurance policies are the following:

1. Valued policy;
2. Average policy;
3. Specific policy; and
4. Floating policy.

1. Valued Policy.

The valued policy is the one in which the value of the subject-matter of insurance is agreed upon between the insured and the insurer in advance; and in case the total loss of the property takes place, the value as stated in the policy is paid to the insured.

It should be understood that it is not essential for the amount of the valued policy to be equal to the market value of the property in question. On the other hand, there may be considerable differences. If at the time of destruction, the market value of the property exceeds the insured value, the insured would not be able to realise the full amount of loss. On the other hand, if at the time of destruction the market value of the subject-matter destroyed happens to fall short of its in-

sured value, the insurance company would pay something more than the actual compensation. Such a policy is, therefore, disadvantageous both to the insured as well as to the insurer. It is generally alleged that a valued policy is an infraction of the principle of indemnity, which statement is partly correct. Legal opinion is not, strictly speaking, definite on the question of the legality of this type of contract, but long usage has afforded a sanction to it. In *Irwing* vs. *Manning* (1847), it was observed that "a policy of assurance is not a perfect contract of indemnity. It must be taken with this qualification that the parties may agree beforehand in estimating the value of the subject assured, by way of liquidated damages, as indeed they may in any other contract of indemnity." Bovill, C. J., once observed: "An exorbitant valuation may be evidence of fraud, but when the transaction is bona fide the valuation agreed upon is binding."

Valued policies, however, serve a very useful purpose in some cases. There are some articles the market value of which cannot always be correctly assessed; for instance, goods used in residential houses are of this nature and generally a valued policy is taken in respect of them. They are also issued in respect of certain objects of jewellery and works of art. But, on the whole, valued policies are not common in fire insurance.

2. Average Policy.

An average policy is one which contains an *Average Clause*. This clause is meant to penalise

under-insurance and states that in case the actual value of the property in question is more than the insured amount at the time of destruction or damage, the insured can realise only such proportion of the actual loss which is borne by the actual value of the property to the insured amount. This is known as a "ratable proportion." It can be expressed as follows:

$$\text{Ratable Proportion} = \frac{\text{Amount of the policy}}{\text{The actual value of property at the the time of destruction or damage}}$$

$$\text{Claim} = \frac{\text{Amount of the policy}}{\text{The actual value of property at the time of destruction or damage}} \times \text{loss}$$

An example will make this clause clear. Suppose a house is insured for Rs. 20,000. It catches fire after sometime and a loss of Rs. 6,000 takes place. At the time of loss the value of the house is estimated as Rs. 40,000. In this case the insured cannot realise the full Rs. 6,000 but only $\frac{20000}{40000} \times 6{,}000 = \text{Rs. } 3{,}000$.

It should be understood that if the insured amount happens to be equal to or more than the actual value of the property at the time of damage or destruction, the average clause becomes inoperative. It is also an important provision that if the property is insured under several policies and any of them includes an average clause, it applies to all the policies under which it is insured.

3. Specific Policy.

As contra-distinguished from the average policies are the specific policies which do not contain the average clause and in the case of which under-insurance is not penalised. A specific policy is taken for a certain specific amount and the insurance company is bound to compensate the insured to any amount up to this maximum point. In other words, any destruction or damage below this figure must be compensated for by the insurance company.

In the example that we gave above in connection with the average policy, it was stated that though a loss of Rs. 6,000 had taken place, but the insured could realise only Rs. 3,000 on account of the average clause. But in the absence of that clause, the insured could have realised the full Rs. 6,000. He could have, as a matter of fact, realised any loss up to Rs. 20,000 which is the amount of the policy.

4. Floating Policy.

A floating policy is the one which insures goods lying at different places. Very often it happens that the goods of a manufacturer are lying partly in the godown, partly on the docks and partly on the railway station and so forth. It would be very tedious for him to take a separate policy on each part. In such cases he usually takes one floating policy covering all these parts. The insurance company in such a case finds out the premium in respect of each part separately and then takes out the average, which is the premium actual-

ly charged. Floating policies generally contain average clause and marine clause. We have already explained the former. The latter, *i.e.*, the marine clause, states that if a loss is covered by a marine insurance policy when policy is taken, or which would be so covered if the fire policy were not to exist, such a loss is excluded from the scope of this policy.

5. Excess Policy.

Then there is quite a large number of other types of fire insurance policies which are of miscellaneous nature. Excess policy is one of them.

Excess policy is very useful to those businessmen whose stock of merchandises is of a fluctuating character. Its value may sometimes increase and at other times decrease and the insurance policy taken for a certain amount may be more or less than the actual indemnity required. In such a case the insured takes an ordinary fire insurance policy for an amount which is equal to the value of the stock he invariably keeps. For the excess stock which is really fluctuating, he takes an excess policy. For instance, if a businessman knows that the value of his stock never falls below Rs. 7,000 but at times increases to Rs. 12,000, he can take an ordinary fire insurance policy for Rs. 7,000 and an excess fire insurance policy for Rs. 5,000.

The actual value of the fluctuating stock is declared every month. The monthly average of these declarations is taken out and the premium rate is regulated accordingly.

6. Declaration Policy.

The holder of an excess policy might be penalised by the existence or importation of the average clause in case his fluctuating stock happens to exceed the amount of the excess policy. To protect him against such an eventuality, the declaration policy has been devised. In the case of such a policy the insured has to declare the maximum amount up to which the value of his stock can possibly go. This is the maximum limit of the liability of the insurance company. The insured has to deposit premium on the 75 per cent of such an amount, but this is only provisional. The insured is not required to pay a premium according to the maximum amount for which he takes the policy, but he has to declare the value of the stock he keeps monthly. An average of such declarations is taken out and the premium that should be charged from him is found out. If the premium deposited exceeds this amount, a refund is made; but if it falls short of this amount the excess is to be paid by the insured.

It should be very clearly understood that the maximum liability of the insurance company is fixed by the maximum amount which is declared by the insured. The declarations that are made from time to time have only this significance that they go to determine the final premium.

7. Adjustable Policy.

Though the declaration policy protects the insured in an admirable fashion, it exposes the insurance

company to a new danger. If the insured is unscrupulous, he might put the maximum amount at a highly inflated figure. For in so doing he does not incur any liability except the depositing of some extra premium which is refundable at the end of the year; but it makes it profitable for him to set his property on fire. This policy, as such, leaves the insurer at the mercy of the insured. Another type of policy known as 'Adjustable Policy' has, therefore, been devised, according to which the policy is taken for the value of the stock existing at the time of the policy is issued. A premium rate is charged according to the amount of the policy at that time. Later when the stock increases or decreases, a declaration to that effect is made and the premium rate is increased or decreased accordingly at that time. Such adjustments are made as many times as the stock varies, so far as the conditions permit.

The difference between the declaration policy and the adjustable policy should be clearly understood. In the case of the declaration policy it is the maximum amount which sets the limit to the liability of the company; whereas in the case of the adjustable policy, the declared amount sets this limit. Suppose a loss of Rs. 2,000 takes place in respect of certain insured property. Now, if the declared value at that time happens to be Rs. 1,000 only, the insured can realise only Rs. 1,000 in the case of adjustable policy; but in the case of declaration policy (presuming the declaration to have been made at a much higher figure than Rs. 2,000) the insured can realise Rs. 2,000 in full.

He would only be required to satisfy the insurance company that the declaration was not quite correct due to some reason beyond his control.

8. Maximum Value with Discount Policy.

In all these above cases there is much botheration in subsequent declarations and adjustments. Another policy known as Maximum Value with Discount Policy has, therefore, come into practice. In this case the policy is issued for the maximum amount and the premium is also paid accordingly. At the end of the term of the policy, a discount equal to one-third of the premium paid is made and this amount is refunded to the insured.

9. Reinstatement Policy.

According to this policy, the insurance company promises to pay in case of loss a sum equal to the cost of reinstatement of the property lost. This policy is not for the value of the property but for the cost of replacement of the said property. It is also sometimes called "New Lamp for the Old" policy. Policies of this type began to be issued during the period of the last Great War when the gulf between the cost of replacement of the buildings and the insured amount became large and the insurance companies after some hesitation agreed to reinstate the property. Since that time policies with the above-mentioned provisions have begun to be issued as a normal feature.

CHAPTER 23

RATING, REINSURANCE AND RETENTION

We shall now discuss how the rates of premium are fixed by a fire insurance company. It should be understood at the very outset that the system of premium determination in fire insurance is not as scientific as in life insurance, though that does not mean that it is based entirely on guess work. The actual process of calculation can be split up into two stages: (1) Classification of Risk, and (2) Working out the Rates.

Classification.

In the earliest stage, premium fixing was certainly guess work and there was no system of classification. The experience of a number of years was collected and annual loss was averaged out. This was taken to be the indicator of future annual losses, the rate of premium being determined accordingly.

This method was very simple but it ignored the important fact that properties covered by fire insurance policies involved varying risks and hence a proper classification of risks should be regarded as a primary necessity.

Shortly it was discovered that the loss varied according to the nature of property and circumstances. The need for classification was thus felt. The first classification adopted was as follows:

(1) Ordinary risks or common risks;
(2) Hazardous risks; and
(3) Doubly hazardous risks.

Separate premium rates were fixed for each class. With the passage of time, this simple classification was found to be inadequate and further discrimination was thought essential. Consequently further sub-classification on the above lines was made and differences in rates were introduced.

This process once begun has now been carried to great lengths. In America, in particular, there is a very elaborate system of classification even to the minutest details. In Europe the classification is quite penetrating but not so elaborate.

Rating.

When a property is proposed for insurance, it is put in one class or the other. A rate is then quoted according to the class in question.

Some years back a flat rate was quoted for all the properties falling under one category; but now a more scientific system known as *"Normal Plus Extra"* or "Accumulating" system has been adopted. This system can be explained with the help of an example. Suppose past experience shows that the rate of premium charged on a property falling under a particular class should be 5 per cent. Then 3 per cent may be charged on every risk of this class; but the remaining 2 per cent is to be an extra charge to be made or avoided on the individual merits of each case. If the property in

question is built of non-combustible material, if heating and lighting arrangement is very sound and if fire-extinguishing appliances are ready at hand, then the amount charged as extra may be much less than 2 per cent. But if, on the other hand, all the above conditions are unsatisfactory, a charge very much above 2 per cent may be made. The extra charge thus levied on all the risks of this class must average to 2 per cent. *Normal plus extra system* is adopted by all the tariff offices.

Combined Risks.—When there is a combination of risks of more than one class in respect of the same subject-matter, the question of rate becomes somewhat complicated. For instance, if a policy covers a workshop and a stationery shop, the rate on which are 7 per cent and 3 per cent respectively, then what rate should be charged on these combined risks? Some companies charge the higher of the two rates while the others add up the two rates and charge the total rate.

Re-insurance.

A peculiarity of fire insurance practices is the re-insurance which is its very regular feature. The following are the chief advantages of this system:

1. Wider distribution of risks and greater stability of business (according to the principle of probability or diversification of risks).
2. The collection of experience of loss from a wider area (as an insurer can insure a greater number of risks).

3. The evolving of a common basis for the rating of the risk (as the direct insurer and re-insuring company are subject to the same terms and conditions).

4. The prevention of the injurious practice of rate-cutting.

Re-insurance is done on two systems: 1. facultative re-insurance system; and 2. treaty re-insurance system.

Under the facultative re-insurance system, the fire office re-insures with another fire office a part of the risk which it has undertaken. The latter accepts it on proper scrutiny and examination. Under this system the re-insuring company and the original company are both engaged in direct insurance. Its another feature is that re-insuring company accepts the risks after proper scrutiny. This increases clerical work but reduces the extent of loss.

Under the re-insurance by treaty system the risk is re-insured with a company which is not engaged in direct insurance, but is meant only for re-insurance. The re-insuring company accepts the risk without any scrutiny. This certainly pushes up the ratio of losses but it is off-set by savings made in administration and clerical charges.

Retention of Risk.

By retention of risk is meant the amount of the risk that a company should retain. In life insurance there is a fixed limit of retention because all the risks

are of the same nature. But in fire insurance the risks are not of the same nature and so there cannot be any such fixed limit of retention. For instance, the insured value of two risks may be Rs. 100 each but one may be liable to catch fire to a greater extent than the other. Hence one is more risky than the other. This is what is actually meant by saying that fire risk is a "double-edged entity," the amount constituting one side and the risk the other. A fire insurance company must determine its retention with due regard to both these factors.

PART V
MISCELLANEOUS TYPES OF INSURANCE

CHAPTER 24

AUTOMOBILE INSURANCE

Every fresh complexity of the modern life, which has been brought about by the advance of science and the triumph of Man over Nature, has brought with it fresh risks to human life and property. Among them, automobile is an important invention which has necessitated automobile insurance. In foreign countries where the use of automobile has become quite common, automobile insurance has made rapid progress. But in our country, poor as it is, only a small fraction of the total population can afford to keep a car and as such this type of insurance has made only little headway.

Automobile insurance covers five risks: (i) public liability risk; (ii) risk of property damage; (iii) risk of collision; (iv) risk of fire; and (v) risk of theft. These risks are covered by policies which are issued by fire insurance companies and casualty insurance companies. As a matter of fact, the first risk is generally covered by a casualty company as the last two risks are usually covered by a fire company. There is an alternativity with regard to risks of property damage and collision but generally casualty companies dominate in the former as the fire companies do in the latter. It would thus appear that in order to secure complete coverage a man may take as many policies as the risks though generally speaking one policy from casualty

company and another from fire company is the absolute minimum. There has, however, arisen a demand for a blanket or complete coverage policy and such has now begun to be issued by some composite offices.

Public Liability Insurance.—According to the law of the land if an automobile causes some bodily injury to a person, fatal or non-fatal, the owner of the car is responsible for such an injury and must compensate the injured person therefor. In India, for instance, fatal injuries caused by automobiles come to about 1,300 or over and non-fatal exceed 10,000. The incidence of accidents would perhaps increase as motor-car becomes a more common type of vehicle. A liability insurance policy is obtained to cover this sort of liability. In the case of such an injury, the insurance company takes upon itself the responsibility of paying damages, cost of surgical relief, cost of suit case, cost of defending the insured and of settling the claim. Such a policy contains some conditions which are important and which generally require the owner of the car to have the car operated within a certain range, to use the car for certain specified purposes, and which fixes a maximum limit up to which claims can be accepted.

Property Damage Insurance.—Sometimes an automobile causes an injury to another person's property and for such damage or destruction on the person responsible for it becomes liable because of the ownership, maintenance or use of the car. This risk can be covered by taking a property insurance policy which would

cover (a) the damages that might have to be paid because of the cost of repairs to the damaged property; and (b) the compensation that might have to be paid for the pecuniary loss arising out of the deprivation of the injured party of the use of his property during the period of its repairs. It should, however, be kept in mind that if a loss is caused by fire, it would not be covered by such a policy; nor will it cover the loss caused to a thing carried in a car or in charge of the insured.

Fire Insurance Policy.—The function of fire insurance policy taken on an automobile is to protect the insured against damages caused to it on account of fire, and often the scope is extended so as to cover transportation perils as well. This policy is very much similar to a fire policy that is obtained in respect of a house or goods kept therein. Such a policy can be valued or unvalued. In the former case the value is agreed upon in advance whereas in the latter case the value is left to be determined at the time when and if the loss takes place. The factors involved in fixing the rate are the construction of the car, the existence of protective devices and any contingencies covered other than fire perils. The most important point is of course the construction of the car, for testing which a schedule is generally drawn up and "points of credit" are assigned to each good feature. On the basis of these total points, automobiles are divided into 8 classes from A to H, and different rates are applied for different classes.

Theft Insurance Policy.—The object of this policy is to protect the automobile owner from the risk of

theft; but no separate policy need be taken for this purpose as usually the cover is obtained by means of an endorsement on the fire insurance policy. The rates vary according to the territory and according to the price of the car. It is interesting to find that on cheaper cars higher premiums are charged and on costlier cars lower, for the reason that cheaper cars can be easily stolen and disposed of. Here also cars are classified into various groups and usually classes run from L to W. Where the insured undertakes to keep the car, when not in motion, properly locked up, a reduction of about 15% is often granted.

Collision Insurance Policy.—The object of this policy is to protect the insured against loss or damage which might be sustained by him as a result of the collision of vehicle with a moving or stationary object. It merely promises to give to him the loss or damage caused to his own car and is therefore aptly called "damage sustained policy." The basis of indemnity is the actual cost of repairs or replacement or the market value at the time of the occurrence of loss.

Automobile is as yet in an undeveloped stage in this country. Its development is, as a matter of fact, dependent on the development of mechanical road transport. Alluring and ambitious pictures of post-war planning in India are being drawn, in which the development of road transport occupies an important place. Hundreds of lorries and automobiles belonging to the army would become useless and would be sold off after the war. At the same time motor drivers and

mechanics have been trained in thousands and will go out of employment in the post-war period, so far as we can see. Then, again, permission has been given to float several automobile manufacturing companies and they are preparing to make the most of post-war opportunities. We are, therefore, very hopeful regarding the future of automobile insurance in India.

CHAPTER 25

CREDIT INSURANCE

Credit insurance can be defined as that form of insurance which purports to compensate manufacturers, wholesalers and jobbers against extraordinary losses in credits suffered as a result of the insolvency of their customers. It should be clearly understood that credit insurance does not seek to give indemnification in respect of expected losses but only takes into account unexpected or extraordinary losses, *i.e.*, losses in excess of the average.

Credit insurance is still in an experimental stage. There is a paucity of extensive and reliable data and in their absence it is not possible to fix any definite rates of premium. Credit insurance thus differs from life or fire insurance in which abundant data exist and place premium determination on a scientific footing. The process of trial and error is still at work and it would be some time before premium rates assume a lasting shape. It is interesting to note that whereas in the matter of fire insurance, premium rates show a tendency to decline, they have been actually rising in the case of credit insurance and in many cases they have been pushed up to nearly twice the former figure.

The need of credit insurance would be readily appreciated by students of commerce and by practical

businessmen. A businessman can generally estimate all the items of his overhead expenses except perhaps one, *viz.*, the extent of bad debts. The usual method of taking bad debts into account is to create a Reserve for Bad and Doubtful Debts to which a certain percentage of debts is added every year and whenever a loss is incurred on account of a debt becoming bad, it is charged to this reserve. But there are years in which losses of an extraordinary nature take place. Usually when the trade cycle takes a turn for the worse and business failures become the order of the day, the amount of bad debts piles up. Such extraordinary losses created by unexpected bad debts cannot be conveniently provided by the businessman himself. The best way to provide for them is to obtain credit insurance policy.

Credit insurance performs several useful functions. Its most useful and most obvious function has already been referred to above. It is no other than to indemnify the insured against an extraordinary loss occasioned by the failure of debtors to pay. But it performs other useful purposes which are of the nature of by-products. It promotes prudent selling by insuring only those accounts that have a high credit rating and fall below a certain maximum limit in individual cases, and by referring to insure or insuring only by charging higher premiums on inferior ratings and on accounts exceeding a given reasonable limit on individual accounts. A credit insurance company also performs collection service for its customers as this ensures higher

collections and fewer bad debts and helps not only the insured but also insurance company.

Credit insurance policies can be divided into two classes, *viz.*, limited and unlimited. A limited credit insurance policy is the one whose face value is the maximum limit of the total liability of the insurance company. If the policy, for instance, has a face value of Rs. 10,000 and the insured sustains a loss of Rs. 20,000, he cannot realise more than Rs. 10,000 from the insurance company. An unlimited credit insurance policy, however, has no such limitation. It makes no provision regarding maximum total liability; nor does it have a face value. So long as losses on individual accounts do not exceed the figures specified in "Table of Ratings" which is usually specified in a policy, they will be paid without any maximum limit.

Both these types of policies are written with several interesting variations. In some policies it is provided that when the due date of repayment of a debt has expired, it must be placed in the hands of the insurance company for collection. In other cases, it is left at the option of the insured when the policy is termed "optional".

A credit insurance company carefully limits the maximum degree of risk which it would assume in respect of bad debts; for otherwise the businessman would become reckless in granting credit and careless in collecting his debts. Credit insurance only aims at indemnifying losses which cannot be foreseen and which are really unexpected. To prevent carelessness on the

part of the insured, six provisions, which are discussed below, are generally mentioned in an insurance policy.

1. Every credit policy provides that the insured must bear what is called "Initial loss" and a loss exceeding this limit would be all that the insurance company will pay. This initial loss is the normal or ordinary loss and is usually found out by finding out the average bad debts in past years, five or six years. The average is expressed as a percentage of gross sales. The insurance company makes good losses exceeding this percentage. The percentage of the initial loss differs from business to business and is not the same with regard to all the business houses in the same line.

2. The insurance company -does not promise to pay even the entire loss exceeding the initial loss thus fixed. The financial worth of a firm is declared by a leading mercantile agency and the protection that is promised is expressed as a percentage of this figure which is known as 'capital rating'. Such an agreement is known as coverage agreement.

3. The insurance company does not even promise to cover a customer for the full extent of the agreed percentage of his financial worth. The maximum limit of the liability in respect of a single account is fixed and it is only upto this extent that compensation can be granted, in an individual case.

4. Some companies do not fix their liability in relation to capital rating but take recourse to credit rating instead. It has been found that the capacity of a customer to repay his debts does not necessarily de-

pend upon the capital resources or his estimated worth. There are other factors to be taken into account. As such credit rating and not capital rating should be adopted as a basis. The lower the credit rating, the lower will be the percentage of the cover that the insurance company would grant.

5. In some cases, the maximum liability of the insurance company in respect of all the customers is limited to a specified total sum.

6. Credit insurance policy also provides that the losses covered would be only those which arise out of insolvency of the customers. Such an insolvency must take place during the term of the policy and its notice should be given during the term of the contract and within a limited period, usually 20 days, since the receipt of the information.

These are only broad conditions and provisions. They give a rough and ready idea regarding the important terms of such a policy. Such an insurance has a bright future and it is expected that in the post-war years, this line of business shall be quite prosperous.

CHAPTER 26

TITLE INSURANCE

The object of a title insurance policy is to protect the owner of a property or a lender of money against the security of a property against a loss that may arise out of a defect in the title or because of its unmarketability or because of unknown liens or encumbrances on the property at the time the policy is issued. It is important to remember that a title insurance policy covers defects in title that existed at the time the insurance was obtained and not those that might arise thereafter. It is because of this that it is sometimes said that such a policy "ends where other insurance begins, namely, at the date of the policy."

A title insurance policy is written on the theory that no known risks are assumed. Before issuing such a policy, a company has a careful examination made regarding the title of the proponent to the property in question; and if there is any defect or risk, it is mentioned in the policy and is definitely excluded from it. In this way the insurance company has to bear only those risks which are not discovered at the time of the examination or those which are not on record and have therefore not been detected.

The advantages of title insurance are several. Firstly, it removes all worries from the mind of a property purchaser regarding a defect in the title that he may acquire. The premium includes an examination fee as well; and the insurance company makes a very thorough search regarding the goodness of the title

which is not possible for an individual not possessing equally large and varied resources. And then the insurance company also undertakes to indemnify the insured if through faulty examination he suffers a loss, which private lawyers cannot guarantee. Secondly, such a policy also protects the insured from a loss which might result from an error of judgment on legal questions relating to the title. Thirdly, it protects the insured against losses which cannot be discovered, for instance transfer by an insane person, the existence of a forged document, improper probate proceedings, etc. Fourthly, it is a unique feature of title insurance policy that the protection it seeks to furnish continues for all the time to come in future. If the insured sells the property or transfers it to somebody else, the policy will continue to protect the new owner. And whenever any dispute arises regarding title, provided the defect in question had arisen before and not after the policy was taken, the insurance company will be there to take care of it.

Before the growth of title companies, the method of having the property records examined was extremely crude. Usually it consisted in asking anybody who claimed to know how to search the records to make an abstract of all the documents of title relating to the property in question; and when the abstract was made it was submitted for the examination of a lawyer who would just see if everything was legally satisfactory. If he found it satisfactory, he would make a certification to that effect.

But the method followed by title insurance companies is quite different. A large company has an elaborate *search arrangement* of a permanent and extensive character. It has in its employ trained searchers whose business is to keep in touch with any document relating to title of any property situated in any particular area, make important notes thereof and send to the office of the company. Permanent records of up-to-date nature of each piece of land situated in a particular area are thus maintained. It should be remembered that for this purpose, insurance companies follow what is known as Tract System, *i.e.*, each company takes a certain area as its sphere of operation and complete and uptodate records of each piece of land in that area are kept. Usually, searchers send their reports hourly or at longer intervals and they are inserted at proper places.

When an application for a policy is received, all the documents and searchers' reports are placed before expert lawyers who go into these records carefully, jot down their impressions and ideas and give in the last a suitable certificate. It is on the basis of this certificate that a policy is issued.

It should be clear that title insurance companies work on the theory that no known risks are assumed; and indeed they conduct such thorough examination, that hardly few risks are overlooked. The result is that the losses borne by title insurance companies are extremely low as compared to the large business that they transact. In U.S.A. it has been found that about half the title companies do not report any loss!

A title insurance policy makes a provision as follows: "that in consideration of the payment of its charges for the examination of title, the company will insure . . . . against all loss or damage not exceeding . . . . . . rupees, which the insured shall sustain by reason of any defect of the title of the insured to the estate or interest described in Shedule A hereto annexed, affecting the premises described in said schedule, or by reason of the unmarketability of the title of the insured described in said schedule to or in said premises, or because of liens or encumbrances against the same at the date of this policy; excepting the defects, estates, objections, liens, or encumbrances mentioned in Schedule B, or excepted by the conditions of this policy."

The insurance company not only undertakes to compensate the insured in respect of a loss but it also undertakes to pay the expenses of litigation and any sum that might be recovered against the insured. The company reserves the right to proceed in a higher court if it so chooses.

In India such companies have not yet started functioning. But they arise only at a certain stage of economic development and if our planning dreams come true, India might soon arrive at that stage of economic advancement. There is, however, no hope that in the near future such companies will be set up in India; and unless some enterprising insurance man with a broad vision and new ideas soon comes forward, this might not become an accomplished fact for a pretty long time to come.

CHAPTER 27

CORPORATE BONDING OR SURETYSHIP

By bonding suretyship we mean the execution of a bond whereby the person doing so becomes surety for the actions of another person. The object of such bonds is to guarantee the honesty of another person or his ability and willingness to do some piece of work.

Bonding is a very old arrangement. But in olden days it was the individual bonding or suretyship that was popular and this is the case even now in a country like India. When a man is employed in a position where he is to discharge some trustworthy duties or handle cash, etc., as might happen when he applies for the post of a cashier in a bank or of a salesman in a big shop, the employers may require him to deposit a certain sum of money as security. Security can also be given in the shape of a moveable or immoveable property. It is not, however, always possible for persons, particular poor persons, to do so. They are then forced to seek some rich friends or relatives who could guarantee that they (*i.e.*, the employees) would act honestly or discharge their duties efficiently; and in case any loss results as a consequence of their dishonesty or disability, they (the executors of the bonds) will make good such a loss. Such persons are called *sureties* and the bond that they execute is called *suretyship bond*.

This sort of individual bonding or suretyship suffers from a number of defects and shortcomings. It

has been aptly observed that "just as individual under-writing in fire and marine insurance proved inadequate for the modern business community, so personal surety was found to have many shortcomings." These shortcomings were as below:—

(i) Rich persons regarded it as a very inconvenient arrangement and a great burden. They could not possibly refuse their friends or relations this favour; but if they agreed to it, they assumed a contingent liability that could undermine their financial position and credit.

(ii) There were some very able and trustworthy persons who did not possess any wealthy friends or relations; and they found it impossible to secure any position of trust and ability.

(iii) In many cases the surety acquired such a hold over the person in whose favour he executed the bond that he could corrupt him and make him do things against his employers.

(iv) Surety had no means whereby he could keep a watch on the actions of the person bonded.

(v) Sometimes it was found that the bond that was executed put a responsibility on its executor quite beyond his capacity to bear it; for a bond was executed in a haphazard manner without a careful calculation of the financial commitments and capacity of the giver of the bond.

"When the disastrous results of these various drawbacks of personal surety became widespread, business began to demand, just as they did in fire and marine insurance, that corporations with large capital and effi-

cient organisation should enter this field. The businessman desires certainty in insurance above all else, and this can be had only if the under-writer is financially strong and enables the insured to ascertain this fact from a regularly published financial report." This led to the starting of insurance companies for doing this work on a commercial basis.

We may at this stage define some of the important terms used in this connexion. The term *bond* refers to a written contract whereby one party holds himself responsibility for the honesty or ability of the actions of another person. *Surety* is the party who thus holds himself responsible. In corporate bonding it is a corporation which acts as a surety. *Principal* is the party for whose actions the surety stands responsible. *Obligee* is the party who is protected by such a bond.

The kinds of bonds that are executed are several. But a simple classification would divide all bonds into five main classes, which we discuss below.

1. *Bonds Covering Honesty Only.*—The bonds which cover honesty are either fidelity bonds or account bonds, the former being much more important than the latter. Fidelity bonds guarantee honesty and they are generally issued to cover persons holding such positions as those of cashier, salesman, collector, officer of loan associations, conductor, treasurer and so forth. The scope of fidelity bonds may be either narrow or broad. In the narrow sense such bonds cover only larceny or embezzlement; but in the broad sense they cover besides embezzlement 'culpable negligence,' *e.g.*,

embezzlement as well as forgery, wilful misapplication, misappropriation etc. The applicant for a bond of this type has to write clearly what type of bond he wants and naturally the premium rate varies according to the type of policy that is wanted. Just as in other types of insurance, so here the person who wants a bond to be executed covering his honesty has to write up an application form. Such forms are usually available free from insurance companies and they require detailed informtion bearing on a number of points, *e.g.*, his personal property, his past record of bankruptcies or dismissal from service, names and addresses of previous employers, a number of references and so on. The bond covers the principal for a given amount and for a given period only.

The other type of bond in this catagory is Account Bonds. Such bond is necessary when a person is selling his accounts receivable to another persons. Such a bond guarantees that no fictitious bonds are being passed on to the other party. This if, of course, only a small protection to the purchaser of accounts receivable but it has its usefulness.

2. *Bonds Covering Financial Strength Only.*—These bonds require only a guarantee of the financial strength of the principal. They are generally required by the Courts. For instance, when a party has won the case in a Lower Court and the defeated party wants to appeal to a higher Court, the appeal may be allowed provided a bond is given. Such a bond protects the party who has won the case. Other cases of the same

nature can be imagined when a bond would be required. But such bonds cover honesty only. If the principal fails in performing his duty financially, the insurance company executing the bond will have to bear this burden. But usually the insurance company secures its position by requiring the principal to deposit some collateral security with it equal to the value of the bond.

3. *Bonds Covering Honesty and Ability.*—The scope of bonds of this type is wider than the scope of either of the two types of bonds referred to above. For such bonds guarantee not honesty alone or ability alone but both. In this category come what are known as Public Official Bonds which are sufficiently indicative of the general nature of this class. In many cases the law requires that a person who is appointed to fill a position of trust and ability should furnish a bond covering his honesty and ability. A bond that is required should protect the obligee not only against embezzlement and other types of financial disability but also guarantees that the principal would discharge his functions as required by law; and if there is any loss arising out of his neglect, omission, commission etc., the loss resulting therefrom will be made good by the principal, and failing him by the insurance company. The liability of the surety in the case of such bonds is prescribed by law and cannot be reduced. Then again the bonds of this nature cover the entire period of service and the surety cannot terminate them in the middle without the consent of the State.

4. *Bonds Involving Honesty, Ability and Financial Strength.*—As is evident, the coverage provided this bond is wider than even the third type of bonds. Its most popular and common variety is known as a Contract Bond. In case the principal contracts to complete a certain piece of work by a certain date and fails to do it, the surety undertakes to hold himself liable for the consequences. In order that the contractor may be able to fulfil his contract, he must be capable, he must make an intelligent bid, he must have the financial strength to carry out the contract and above all he must be honest. It also naturally follows that the surety will have to make a thorough enquiry and scrutiny in the affairs of the principal before he can safely execute such a bond. Other bonds coming in this category are Franchise Bonds and Depository Bonds.

5. *Bonds Involving Honesty and Financial Strength.*—This class contains many simple varieties of bonds. Of these the bond for lost instruments is a typical example. Sometimes a holder loses his share certificate or insurance policy or some other valuable document and applies to the proper party to issue a duplicate. Before doing so, the company might require him to give a bond that in case somebody gets hold of the lost document and acts in a manner that the Company is put to loss, such a loss would be made good by the applicant. In this class also come the bonds which are given to insure that some manufacturers who are required to pay taxes, will pay them duly.

PART VI

INSURANCE LEGISLATION IN INDIA

CHAPTER 28

HISTORICAL SURVEY

The statute law governing insurance in British India has come into being only recently. Before the year 1912, there was no piece of legislation relating exclusively to insurance in this country. Hitherto insurance business had not much developed in this country and the Government did not find it necessary to provide a special code of law relating to it. But in that year two important Acts relating exclusively to insurance were passed.

The first Act was the *Provident Insurance Societies Act V of 1912*. This Act was meant to govern only provident insurance societies—the societies which issue life insurance policies of Rs. 500 or less and also undertake iusurance on marriage, sickness and other allied classes of occurrences on a limited scale. This Act was framed on the lines of the Friendly Societies Acts of Great Britain.

The second Act was the *Indian Life Assurance Companies' Act VI of 1912,* which was passed simultaneously with the foregoing measure. This was framed after the corresponding British statute and was meant to govern the bigger life assurance companies issuing policies for large amounts.

But these Acts governed only life assurance business. Other types of insurance had not become very

important in the country by that time; and no need was felt for any legislation for them.

These two Acts remained in force for a fairly long time. During the period of the last Great War, however, the miscellaneous types of insurance greatly increased in this country and the attention of Indian insurance offices began to be attracted by non-life business. The latter had hitherto been the monopoly of foreign, mainly British, insurance companies; and our Indian concerns began to feel the force of their competition. It began to be felt that some sort of legislation in favour of Indian companies should be passed. With the growth of non-life business, legislation regarding this type of insurance also became necessary. At the same time, the working of the aforesaid Acts had shown that they were not free from defects and certain amendments were absolutely necessary. Important commercial bodies began to make persistent demand for a new Act which should govern not only life but also non-life insurance business. This ultimately led to the half-hearted *Indian Insurance Companies Act XX of* 1928.

The history of the legislation of this Act of 1928 is not without interest. In 1924 or so the Government of India decided to enact fresh legislation for insurance purposes; and a bill was accordingly framed. It was introduced in the Indian Legislative Assembly. It was even circulated for opinion and opinions were duly received. But at this stage, a new factor appeared on the scene. The Government of Great Britain set up the Clauson Committee to report as to what amendments

were necessary in the British insurance legislation. It was thought advisable by the Government of India to wait for the publication of the report of this Committee before framing a new insurance legislation for India. The matter was, therefore, postponed for the time being. But it was felt that during the time available till the appearance of the report of the Clauson Committee and the action of the British Government thereon, efforts should be made to collect statistics regarding insurance matters, mainly with a view to help in the framing of the new comprehensive Act. It was with this object that the Government of India passed a stop-gap legislation in the shape of the *Indian Insurance Companies Act XX of* 1928.

The Clauson Committee submitted its report in 1927 but its recommendations were not acted upon by the Government of Great Britain. The Government of India did not, therefore, take any further step in this direction. But public demand for a new and comprehensive Act became stronger every day, with the result that the Government had to yield.

The Government of India appointed a Special Officer to make a survey of the whole field of insurance in India and to report as to what type of legislation is really called for. The Special Officer submitted his report towards the end of 1935. The Government then appointed a Consultative Committee containing representatives of various interests, with a view to take their opinion on the recommendations made by the Special Officer. After this was done, the bill was framed and

was circulated for opinion. It was introduced in the Indian Legislative Assembly in 1937 and became law early in 1938. It actually came into force on 1st July, 1939.

The most important features of the Indian Insurance Act of 1938 are easily noticeable. It is a comprehensive piece of insurance legislation in this country, governing not only life but also non-life branches of insurance, and has no parallel in the history of Indian insurance. Again, this Act provides for a strict State control of insurance business. The Act does not follow the British principle of minimum State control with maximum of publicity, which is quite unsuited to India; but it makes provision for quite strict control and supervision by the Government of insurance business, which control and supervision are to be exercised through the Superintendent of Insurance. The Act also touches the various aspects of insurance business. Its provisions have aroused much controversy and have given much food for thought. It has been described as one of the most controversial pieces of legislation in this country.

This Act may be studied under the following headings:

1. Provisions Applicable to Insurers.
2. Investment, Loans and Management Provisions.
3. Amalgamation and Transfer of Insurance Business.

4. Commission and Rebates and Licensing of Agents.
5. Special Provisions.
6. Provisions Relating to Provident Societies.
7. Mutual Insurance Companies and Co-operative Life Insurance Societies.
8. Miscellaneous Provisions.

These shall form the subject-matter of the following chapters.

CHAPTER 29

PROVISIONS APPLICABLE TO INSURERS

The Act makes certain provisions which are applicable to insurers and which are quite strict in their nature. They are contained in sections 2 to 26.

It has now been provided that every insurance company, foreign or Indian, which wants to carry on business in India must get itself registered with the Superintendent of Insurance, no matter what the class of insurance business it transacts.

No life insurance company can now issue a life insurance policy for less than Rs. 500. Life policies for less than this sum can be issued only by a Provident Society, or a Co-operative Life Insurance Society or a Mutual Insurance Company.

The new insurance companies must at least possess a working capital of a net sum of not less than Rs. 50,000, exclusive of the deposits to be made under the Act. Every insurer must also make a deposit of cash or approved securities with the Reserve Bank of India of an amount which varies according to the class or classes of business transacted, full particulars relating to which are contained in Section 7.

Provisions have also been made regarding the accounts and balance sheet, audit, actuarial report and abstract, register of policies, register of claims, submission of returns, etc. Efforts have been made to ensure proper publicity of essential information.

The reader is advised to go through the following sections carefully with a view to get a first-hand idea of the above-mentioned provisions:

Insurers to be subject to this Act while liabilities remain unsatisfied.

[1][**2A.** Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in British India in respect of business of that class remain unsatisfied or not otherwise provided for.

This Act not to apply to certain insurers ceasing to enter into new contracts before commencement of Act.

2B. The provisions of this Act shall not apply to an insurer as defined in paragraph (*i*) or (*iii*) or sub-clause (*a*) of clause (*9*) of section *2* in relation to any class of his insurance business where such insurer has ceased, before the commencement of this Act, to enter into any new contracts of that class of business.]

Registration.

3. (*1*) No insurer shall, after the commencement of this Act, begin to carry on any class of insurance business in British India, and no insurer carrying on any class of insurance business in British India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Superintendent of Insurance a certificate of registration.

(*2*) Every application for registration shall be accompanied by—

[1] Sections 2A and 2B were inserted by s. 2A, of the Insurance (Amendment) Act, 1939 (11 of 1939).

(*a*) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 1913, or, in the case of any other insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or, in the case of an insurer having his principal place of business or domicile outside British India, the document specified in clause (*a*) of section 63;

(*b*) the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act, 1913, and in the case of an insurer specified in sub-clause (*a*) (*ii*) of clause (9) of section 2 the names and addresses of the proprietors and of the manager in British India, and in any other case the full address of the principal office of the insurer in British India, and the names of the directors and the manager at such office and the name and address of some one or more persons resident in British India authorised to accept any notice required to be served on the insurer;

(*c*) a statement of the class or classes of insurance business done or to be done, and a

statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited;

(*d*) where the provisions of section 6 or section 97 apply, a declaration verified by an affidavit made by the principal officer of the insurer authorised in that behalf that the provisions of those sections as to working capital have been complied with;

(*e*) in the case of an insurer having his principal place of business or domicile outside British India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country;

(*f*) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an

actuary that such rates, advantages, terms and conditions are workable and sound:

Provided that in the case of marine, accident and miscellaneous insurance business other than workmen's compensation and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available; and

(*g*) the prescribed fee for registration being not more than one hundred rupees for each class of business.

(*3*) In the case of any insurer having his principal place of business or domicile outside British India, the Superintendent of Insurance shall withhold registration or shall cancel a registration already made, if he is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 62 is not satisfied.

(*4*) In the case of any insurer the Superintendent of Insurance shall cancel a registration already made if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits.

(*5*) When the Superintendent of Insurance withholds or cancels any registration under sub-section (*3*)

or sub-section (*4*) he shall give notice in writing to the insurer of his decision, and the decision shall take effect on such date as he may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(*6*) The Superintendent of Insurance shall, on being satisfied that the applicant has fulfilled all the requirements of the Act applicable to him, grant the insurer a certificate of registration.

Minimum limits for annuities and other bnefits secured by policies of life insurance.

4. (*1*) No insurer, not being a provident society to which Part III, or a Co-operative Life Insurance Society or a Mutual Insurance Company to which Part IV of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of this Act an annuity of fifty rupees or less or a gross sum of rupees five hundred or less exclusive of any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.

(*2*) Nothing contained in this section shall apply to group policies, that is to say, policies in respect of a group of persons engaged in the same occupation or kindred occupations under a single employer, for an aggregate sum of not less than rupees five thousand, under which an insurer pays or undertakes to pay a gross sum of rupees five hundred or less on an individual life.

5. (*1*) An insurer shall not be registered by a name identical with that by which an insurer in existence is already registered, or so nearly resembling that name as to be calculated to deceive except when the insurer in existence is in the course of being dissolved and signifies his consent to the Superintendent of Insurance.

Restriction on name of insurer.

(*2*) If an insurer, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first-mentioned insurer shall, if called upon to do so by the Superintendent of Insurance on the application of the second-mentioned insurer, change his name within a time to be fixed by the Superintendent of Insurance:

Provided that nothing in this section shall apply to any insurer carrying on business before the 27th day of January, 1937, under the Indian Life Assurance Companies Act, 1912.

(*3*) No insurer other than a provident society to which Part III applies, who begins to carry on insurance business after the commencement of this Act, shall adopt as its name and no such insurer carrying on business before the commencement of this Act shall continue after the expiry of six months from the commencement therof to use as its name any combination of words which includes the word "provident."

6. No insurer incorporated after, or who com-

menced carrying on the business of life insurance in British India, whether solely or in common with any other business, after the 26th day of January, 1937, shall be registered unless he has as working capital a net sum of not less than fifty thousand rupees exclusive of the deposit to be made before registration under sub-section (5) of section 7 of this Act, and exclusive in the case of a company of any sums payable as preliminary expenses in the formation of the company.

Requirements as to capital.

Deposits.

7. (*1*) Every insurer not being an insurer specified in sub-clause (*c*) of clause (*9*) of section 2 shall, in respect of the insurance business carried on by him in British India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government cash or approved securities, estimated at the market value of the securities on the day of deposit, of the amount hereafter specified, namely:

(*a*) where the business done or to be done is life insurance only, two hundred thousand rupees;

(*b*) where the business done or to be done is fire insurance only, one hundred and fifty thousand rupees;

(*c*) where the business done or to be done is marine insurance only, one hundred and fifty thousand rupees;

(*d*) where the business done or to be done is accident and miscellaneous insurance including workmen's compensation, and motor car insurance, one hundred and fifty thousand rupees;

(*e*) where the business done or to be done includes life insurance and any one of the three classes specified in clauses (*b*), (*c*) and (*d*), three hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business.

(*f*) where the business done or to be done includes life insurance and any two of the three classes specified in clauses (*b*), (*c*) and (*d*), four hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;

(*g*) where the business done or to be done includes life insurance and all three classes specified in clauses (*b*), (*c*) and (*d*), four hundred and fifty thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;

(*h*) where the business done or to be done does not include life insurance but includes any two of the classes specified in clauses (*b*), (*c*) and (*d*), two hundred and fifty thousand rupees;

(*i*) where the business done or to be done does

not include life insurance but includes all three classes specified in clauses (*b*), (*c*) and (*d*), three hundred and fifty thousand rupees; and

(*j*) where the business done or to be done is marine insurance relating to country craft or its cargo [2][and no other type of marine insurance], ten thousand rupees only.

(*2*) Where the insurer is an insurer specified in sub-clause (*c*) of clause (*9*) of section 2, he shall be deemed to have complied with the provisions of this section as to deposits, if in respect of any class of insurance business [3][carried on] by him in British India under a standing contract of the nature referred to in sub-clause (*c*) of clause (*9*) of section 2 a deposit of an amount one-and-a-half times that specified in sub-section (*1*) as the deposit for that class of insurance business has been made in the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of the securities on the day of deposit by or on behalf of the underwriters who are members of the Society of Lloyd's with whom he has his standing contract.

(*3*) Where the deposit is to be made by an insurer incorporated before, or carrying on the business of

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[2] These words were inserted by s. 3 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[3] These words were substituted for the word "transacted," *ibid.*

insurance in British India before, the 27th day of January, 1937, the deposit referred to in sub-section (*1*) may be made in not more than seven instalments, of which the first shall be not less than one-fourth of the total amount of the deposit and shall be paid before the application for registration is made, the second shall be not less than one-sixth of the balance of the deposit and shall be paid before [4][the expiry of four months from the commencement of this Act], and the subsequent instalments shall be of not less than the minimum amount required as the second instalment and shall be paid before the 1st day of January of each succeeding year:

Provided that in the case of insurers carrying on life insurance business only, the deposit may be made in not more than ten instalments, of which the first shall be not less than one-fourth of the total amount of the deposit, and shall be paid before the application for registration is made, the second shall be not less than one-ninth of the balance of the deposit, and shall be paid before [4][the expiry of four months from the commencement of this Act], and the subsequent instalments shall be of not less than the minimum amount required as the second instalment, and shall be paid before the 1st day of January of each succeeding year.

(*4*) Notwithstanding anything contained in subsection (*3*), in the case of an insurer [5][to whom that

[4] These words were substituted for the words and figures "the 1st day of January, 1939," by s. 3 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[5] These words were inserted, *ibid.*

sub-section applies] not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit referred to in sub-section (*1*) shall be made in two instalments of which the first shall be not less than one-half of the total amount of the deposit and shall be made before the application for registration is made, and the second shall be made before the expiry of one year from the date of registration.

(*5*) Where the deposit is to be made by an insurer neither incorporated before, nor carrying on insurance business in British India before, the 27th day of January, 1937, the deposit may be made in instalments of not less than one-fourth the total amount before the application for registration is made, not less than one-third the balance before the expiry of one year from the commencement of business in British India, and not less than one-half the residue before the expiry of two years from the commencement of business in British India, and the balance before the expiry of three years from the commencement of business in British India:

Provided that in the case of any insurer not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit shall be made in full before the application for registration is made.

(*6*) No class of insurance business in addition to the class or classes in respect of which an insurer is

already liable to make a deposit under sub-section (*1*) or sub-section (*2*) shall be undertaken by the insurer until the deposit to which he is already liable has been made in full, and the additional deposit required in respect of the additional class of business or so much thereof as under the provisions of sub-section (*3*), (*4*) or (*5*) is to be made before the application for registration, has also been made in full.

(7) Securities already deposited with the Controller of Currency in compliance with the Indian Life Assurance Companies Act, 1912, shall be transferred by him to the Reserve Bank of India and shall, to the extent of their market value on the day of the first deposit made in compliance with this Act,be deemed to be deposited under this Act in respect of the life insurance business of the insurer.

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurer and shall be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned; and any interest accruing due and collected on securities deposited under sub-section (*1*) or sub-section (*2*) shall be paid to the insurer, subject only to deduction of the normal commission chargeable for the realization of interest.

(*9*) The insurer may at any time substitute for securities lodged with the Bank under this section other approved securities of equal value at the market rate prevailing at the time of substitution, and the Reserve Bank of India shall, if so requested by a depositor, in-

vest in approved securities the whole or any part of a deposit made originally in cash or the whole or any part of cash received by the Bank on sale of or on the maturing of securities lodged by the depositor.

(*10*) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (*1*), unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

Reservation of deposits.

8. (*1*) Any deposit made under section 7 *[or section 98] shall be deemed to be part of the assets of the insurer but shall not be susceptible of any assignment or charge; nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilties remain undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way.

(*2*) Where a deposit is made in respect of life insurance business the deposit made in respect thereof

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* These words and figures were inserted by s. 4 of the Insurance (Amendment) Act, 1939 (11 of 1939).

shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer.

Refund of deposits.

9. Where an insurer has ceased to carry on in British India any class of insurance business in respect of which a deposit has been made under section 7 [7][or section 98] and his liabilities in British India in respect of business of that class have been satisfied or are otherwise provided for, the Court may, on the application of the insurer, order the return to the insurer of so much of the deposit as does not relate to the classes of insurance, if any, which he continues to carry on.

Separation of accounts and funds.

10. (*1*) Where the insurer carries on business of more than one of the classes specified in clauses (*a*), (*b*), (*c*) and (*d*) of section (*1*) of section 7, he shall keep a separate account of all receipts and payments in respect of each such class of insurance business.

(*2*) Where the insurer carries on the business of life insurance, the excess of receipts over payments in respect of such business shall be carried to and shall form a separate fund to be called the life insurance fund and the deposit made by the insurer in respect of life insurance business shall be deemed to be part of such fund.

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[7] These words and figures were inserted by s. 5 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(3) The life insurance fund shall be as absolutely the security of the life policy-holders as though it belonged to an insurer carrying on no other business than life insurance business and shall not be liable for any contracts of the insurer for which it would not have been liable had the business of the insurer been only that of life insurance and shall not be applied directly or indirectly save as provided in section 49 for any purposes other than those of life insurance.

Accounts and balance-sheet.

11. (1) Every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall at the expiration of each calendar year prepare with reference to that year—

(*a*) in accordance with the regulations contained in Part I of the First Schedule, a balance-sheet in the form set forth in Part II of that Schedule;

(*b*) in accordance with the regulations contained in Part I of the Second Schedule, a profit and loss account in the forms set forth in Part II of that Schedule, except where the insurer carries on business of one class only of the classes specified in clauses (*a*), (*b*) and (*c*) of sub-section (1) of section 7 and no other business;

(*c*) in respect of each class of insurance business carried on by him in accordance with the regulations contained in Part I of the Third Schedule, a revenue account in the form or forms set forth in Part II of that Schdule applicable to that class of insurance business.

(*2*) Unless the insurer is a company to which the Indian Companies Act, 1913, applies, the accounts and statements referred to in sub-section (*1*) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in the case of a firm by two partners of the firm, and shall be accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report by such persons on the affairs of the business during that period.

(*3*) Where an insurer carrying on the business of insurance at the commencement of this Act has prepared the balance-sheet and accounts required by the Indian Life Assurance Companies Act, 1912, or has based his accounts upon the financial and not the calendar year, the provisions of this section shall, if the Central Government so directs in any case apply until the 31st day of December, 1939, as if in sub-section (*1*) references to the calendar year were references to the financial year.

12. The balance-sheet, profit and loss account,

revenue account and profit and loss appropriation account of every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall, unless they are subject to audit under the Indian Companies Act, 1913, be audited annually by an auditor and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913.

Audit.

13. (*1*) Every insurer carrying on life insurance business shall, in respect of the life insurance business transacted by him in India, and also in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) clause (*9*) of section 2 in respect of all life insurance business transacted by him, once at least in every five years cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule.

Actuarial report and abstract.

(2) The provisions of sub-section (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the dstribution of profits or an investigation is made of which the results are made public.

(3) There shall be appended to every such abstract as is referred to in sub-section (1) or sub-section (2) a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(4) There shall be appended to every such abstract a statement, in conformity with the requirements of Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule, of the life insurance business in force at the date to which the accounts of the insurer are made up for the purposes of such abstract:

Provided that, if the investigation referred to in sub-section (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every five years.

(5) Where an investigation into the financial condition of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance-sheet as at the date at which the in-

vestigation is made shall be prepared and audited in the manner provided by this Act.

Register of Policies and register of claims.

14. Every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2 in respect of all business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall maintain—

(*a*) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and

(*b*) a register or record of claims, in which shall be entered every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds therefor.

Submission of returns.

15. (*1*) The audited accounts and statements referred to in section 11 and the abstract and statement referred to in section 13 shall be printed, and four copies therof shall be furnished as returns to the Superintendent of Insurance within six months from the end of the period to which they refer. The Superintendent of Insurance may

extend the time allowed for furnishing the abstract and statement referred to in section 13 by a period not exceeding three months:

Provided that the said period of six months shall in the case of insurers having their principal place of business or domicile outside India and in the case of insurers constituted, incorporated or domiciled in British India but also carrying on business outside India be extended by three months, and provided further that the Central Government may in any case extend that time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in the case of an insurer being an individual, by the insurer himself.

(3) Where the insurer's principal place of business or domicile is outside British India, he shall forward to the Superintendent of Insurance, along with the documents referred to in section 11, the balance-sheet, profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled, or, where such documents

are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period.

Returns by insurers established outside British India.

16. (*1*) Where, by the law of the country in which an insurer, not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2, is constituted, incorporated or domiciled, the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents required to be furnished as returns in accordance with the provisions of section 15, the provisions of sub-section (*2*) of this section shall apply to such insurer in lieu of the provisions of sections 11, 12, 13 and 15.

(*2*) The insurer shall, within the time specified in sub-section (*1*) of section 15, furnish to the Superintendent of Insurance four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (*1*) of this section, and in addition thereto, [8][four certified copies] in the English language of each of the following statements, namely:—

(*a*) a statement [9][audited by a person duly qualified under the law of the insurer's

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[8] These words were substituted for the words "four copies" by s. 7 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[9] These words were inserted, *ibid.*

country] showing the assets held by the insurer in India,

(*b*) for each class of insurance business carried on by him, a revenue account in the form or forms set forth in Part II of the Third Schedule applicable to that class of business, [9][and similarly audited,] showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under this clause of this sub-section.

(*c*) an abstract of the valuation report in respect of all life insurance business transacted by the insurer in India, prepared in the manner required by sub-section (*1*) of section 13. and,

(*d*) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account.

Exemption from certain provisions of the Indian Companies Act, 1913.

17. Where an insurer, being a company incorporated under the Indian Companies Act, 1913, [10][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] in

[10] These words were inserted by s. 8 of the Insurance (Amendment) Act, 1939 (II of 1939).

any year furnishes [11][his balance-sheet and accounts] in accordance with the provisions of section 15, he may at the same time send to the Registrar of Companies [12][copies of such balance-sheet and accounts]; and [13][where such copies are so sent] it shall not be necessary for the company [14][to file copies of the balance-sheet and accounts] with the Registrar as required by sub-section (*1*) of section 134 of that Act and [15][such copies so sent] shall be dealt with in all respects as if they were filed in accordance with that section.

This Act not to apply to preparation of accounts, etc., for periods prior to this Act coming into force

[16][**17A.** Nothing in this Act shall apply to the preparation of accounts by an insurer and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.]

These words were substituted for the words "his accounts and balance-sheet," *ibid.*

[12] These words were substituted for the words "a copy of such accounts and balance-sheet," *ibid.*

[13] These words were substituted for the words "where such copy is so sent," *ibid.*

[14] These words were substituted for the words "to file a balance-sheet," *ibid.*

[15] These words were submitted for the words "the copy of the accounts and balance-sheet so sent," *ibid.*

[16] This section was inserted by s. 9, *ibid.*

Furnishing reports.

18. Every insurer shall furnish to the Superintendent of Insurance a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members or policy-holders as the case may be.

Abstract of proceedings of general meetings.

19. Every insurer, being a company or body incorporated under any law for the time being in force in British India, shall furnish to the Superintendent of Insurance an abstract of the proceedings of every general meeting within thirty days from the holding of the meeting to which it relates.

Custody and inspection of documents and supply of copies.

20. (*1*) Every return furnished to the Superintendent of Insurance or a certified copy thereof shall be kept by the Superintendent and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied, any five figures being deemed equivalent to one word.

(*2*) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 or section 16 shall, on the application of any shareholder or policyholder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in British India

and in any other case within one month of such application.

(*3*) A copy of the memorandum and articles of association of the insurer if a company shall on the application of any policy-holder be supplied to him by the insurer on payment of one rupee.

21. (*1*) If it appears to the Superintendent of Insurance that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he may—

Powers of Superintendent of Insurance regarding returns.

(*a*) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return;

(*b*) call upon the insurer to submit for his examination at the principal place of business of the insurer in British India any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose;

(*c*) examine any officer of the insurer on oath in relation to the return;

(*d*) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the in-

accuracy or supply of the deficiency was delivered to the insurer and if he declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 relating to the furnishing of returns.

(2) The Court may on the application of an insurer and after hearing the Superintendent cancel any order made by the Superintendent under clause (*a*), (*b*) or (*c*) of sub-section (1) or may direct the acceptance of any return which the Superintendent has declined to accept, if the insurer satisfies the Court that the action of the Superintendent was in the circumstances unreasonable.

Power of Superintendent of Insurance of order revaluation.

22. If it appears to the Superintendent of Insurance that an investigation or valuation to which section 13 refers does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, he may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Superintendent of Insurance.

Evidence of documents.

23. (*1*) Every return furnished to the Superintendent of Insurance, which has been certified by the Superintendent to be a return so furnished, shall be deemed to be a return so furnished.

(2) Every document, purporting to be certified by the Superintendent of Insurance to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.

Summary of returns to be published.

24. The Central Government shall every year direct, a summary of the accounts, balance-sheets, statements, abstracts and other returns under this Act or purporting to be under this Act which have been furnished to the Superintendent of Insurance for the year preceding the year of publication and may append to such summary any note of the Central Government and any correspondence in relation thereto.

Returns to be published in statutory forms.

25. No insurer shall publish in British India any return in a form other than that in which it has been furnished to the Superintendent of Insurance:

Provided that nothing contained in this section shall prevent an insurer from publishing a true and accurate abstract from such returns for the purposes of publicity.

Alterations in the particulars furnished with application for registration to be reported.

26. Whenever any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 3 to accompany an application by an insurer for registration, the insurer shall forthwith furnish to the Superintendent of Insurance full particulars of such alteration.

CHAPTER 30

INVESTMENT, LOAN AND MANAGEMENT

The Act has made quite strict provisions regarding the investments made by insurance companies. No less than 55% of the total fund of an insurance company must be invested according to section 27 of the Act. 25% of the fund must be held in Government of India securities and a further sum equal to 30% must be invested in Government of India securities or other approved securities or securities of or guaranteed as to principal and interest by the Government of the United Kingdom. Indian insurance men have vehemently criticized this provision which greatly hampers their investment policies. But the official opinion is that this provision is absolutely essential for the protection of policyholders.

Loans to directors managers, managing agents, actuaries, auditors and officers of insurance companies have been generally prohibited. Exceptions are made in only those cases where the safety of loans can be guaranteed.

The managing agency system, in so far as it relates to insurance business, has been abolished by section 32(*1*).

Power has been given to the Superintendent of Insurance to make an investigation into the affairs of an insurance company if its position appears to be shaky under the provisions of section 33.

The sections containing all these provisions are 27 to 34. They are reproduced below and the reader should study them carefully.

Investment of assets and restriction on loans.

27. (*1*) Every insurer incorporated or domiciled in British India shall, subject to the provisions of sub-section (*3*), at all times invest and hold invested assets equivalent to not less than-fifty-five per cent of the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit made under section 7 [1][or section 98] by the insurer in respect of his life insurance business and less any amount due to the insurer for loans granted by him on policies of life insurance [2][maturing for payment in India and within their surrender values], in the manner following, namely, twenty-five per cent of the said sum in Government securities and a further sum equal to not less than thirty per cent of the said sum in Government securities or other approved securities or securities of or guaranteed as to principle and interest by the Government of the United Kingdom.

Explanation.—The provisions of this sub-section shall apply also to insurers incorporated in or domiciled in the United Kingdom.

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[1] These words and figures were inserted by s. 10 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[2] These words were inserted, *ibid.*

F. 21

(2) An insurer incorporated or domiciled elsewhere than in British India or the United Kingdom shall, subject to the provisions of sub-section (3), at all times invest and hold invested assets equivalent to not less than the sum of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit made under section 7 [3][or section 98] by the insurer in respect of his life insurance business and less any amount due to the insurer on loans granted by him on policies of life insurance [4][maturing for payment in India and within their surrender values] in the manner following, namely, thirty-three and one-third per cent. of the said sum in Government securities, and the balance in Government securities or other approved securities or securities of or guaranteed as to principle and interest by the Government of the United Kingdom.

(3) An insurer carrying on business at the commencement of this Act to whom sub-section (1) or sub-section (2) applies shall before the expiry of four years from the commencement of this Act invest the total amount required to be invested by those sub-sections in the manner required thereby:

Provided that of such total amount the insurer shall have invested not less than one-fourth in securities

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[3] These words and figures were inserted by s. 10 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[4] These words were inserted, *ibid*.

of the nature specified in sub-section (*1*) before the expiry of one year, not less than one-half before the expiry of two years, and not less than three-fourths before the expiry of three years from the commencement of this Act.

(*4*) The assets required by this section to be held invested by an insurer to whom sub-section (*2*) applies shall be held in trust for the discharge of claims of the nature referred to in sub-section (*2*) and shall be vested in trustees resident in British India and approved by the Central Goverment by an instrument of trust which shall be executed by the insurer and approved by the Central Government and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation.—Sub-sections (*2*) and (*4*) shall apply to an insurer incorporated in British India whose share capital to the extent of one-third is owned by, or the members of whose Governing Body to the extent of one-third consists of, individuals domiciled elsewhere than in British India or the United Kingdom.

Statement of investments of assets

28. (*1*) Every insurer registered under this Act carrying on the business of life insurance, not being a provident society, shall twice in every year, namely, within [5][thirty-one] days of the 30th day of June and within [6][thirty-one] days

[5] This word was substituted for the word "fourteen" by s. 11 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[6] These words were substituted for the words "the principal officer," *ibid.*

of the 31st day of December, submit to the Superintendent of Insurance a statement showing as at the said dates the assets held invested in accordance with section 27 and such statement shall be certified by [7][a principal officer] of the insurer.

(2) The Superintendent of Insurance shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets invested in compliance with section 27 and the insurer shall comply with all requisitions made by the Superintendent in that behalf.

Prohibition of loans.

29. No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, managing agent, actuary, auditor or officer of the insurer if a company, or where the insurer is a firm, to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent, actuary, officer or partner:

Provided that nothing herein contained shall apply to loans made by an insurer to a banking company;

Provided further that every existing loan to any director, manager, managing agent, auditor, actuary, officer or partner, notwithstanding any contract to the contrary, shall be repaid within one year from

[7] These words and figures were inserted by s. 12 of the Insurance (Amendment) Act, 1939 (11 of of 1939).

the commencement of this Act, and in case of default, such defaulting director, manager, managing agent, auditor, actuary, officer or partner shall cease to hold office on the expiry of one year from the commencement of this Act:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company.

Liability of directors, etc., for loss due to contraventions of sections 27 and 29.

30. If by reason of a contravention of any of the provisions of section 27 or section 29, any loss is sustained by the insurer or by the policy-holders, every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.

Assets of Insurer how to be kept.

31. None of the assets in British India of any insurer shall, except in the case of deposits made with the Reserve Bank of India under section 7 are required to be vested in trustees [8][or section 98] or in so far as assets are required to be vested in trustees by sub-section (*4*) of section 27, be kept otherwise than [9][in the name of a public officer approved by the Central Government, or] in the corporate name of the undertaking, if

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[8] These words were inserted, *ibid.*

a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual.

Limitation on employment of managing agents and on the remuneration payable to them.

32. (*1*) No insurer shall, after the commencement of this Act, appoint a managing agent for the conduct of his business.

(*2*) Where any insurer engaged in the business of isurance before the commencement of this Act employs a managing agent for the conduct of his business, then, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in the articles of the insurer, if a company, or in any agreement entered into by the insurer, such managing agent shall cease to hold office on the expiry of three years from the commencement of this Act and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent.

(*3*) After the commencement of this Act, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in any agreement entered into by an insurer or in the articles of association of an insurer being a company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousand rupees per month in all, including salary and commission and other remuneration

payable to and receivable by him, for his services as managing agent.

INSPECTION

Power of Superintendent of Insurance to order Inspection.

33. (*1*) If the Superintendent of Insurance has reason to believe that the interests of the policy-holders of an insurer are in danger or that an insurer is unable to meet his obligations or has made default in complying with any of the provisions of this Act, or that an offence under this Act has been or is likely to be committed by an insurer or any officer of an insurer, or if he receives a requisition in this behalf signed by shareholders of an insurer being a company not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or if he receives a requisition in this behalf signed by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees and supported by an affidavit, he may, after giving notice to the insurer and giving him an opportunity to be heard, appoint an auditor or actuary or both, not being an auditor or actuary in the employ of the insurer, to investigate the affairs of the insurer, or may himself make such investigation.

(*2*) The Court may, on the application of an insurer and after giving notice to and hearing the Superintendent of Insurance, forbid such action by the

Superintendent, if the insurer satisfies the Court that it is unnecessary in the circumstances.

(3) The results of any investigation made under this section shall be embodied in a report of which one copy shall be lodged with the Superintendent of Insurance and one copy shall be furnished to the insurer; and a copy of such report shall be furnished to the policy-holders who have sent a requisition for such an investigation.

(4) The Suprintendent of Insurance may require the insurer to comply within a time to be specified by him (not being less than fifteen days from the receipt of the notice by the insurer) with any directions he may issue to remedy defects disclosed by such inspection.

(5) If, as a result of any investigation made under this section, the Superintendent of Insurance is of opinion that it is necessary in the interests of the policy-holders that the business of the insurer should be wound up, or if the insurer fails to comply with any directions issued under sub-section (4), the Superintendent may, after giving notice to the insurer and giving him an opportunity to be heard,apply to the Court to have the business of the insurer wound up.

Powers of investigation.

34. When any investigation is made in pursuance of section 33 the provisions of section 140 of the Indian Companies Act, 1913, shall apply for the purposes of such investigation as they apply to an investigation made in pursuance of section 138 of that Act, and all expenses of and incidental to such investigation shall be defrayed by the insurer.

CHAPTER 31

AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS

If an insurance company wants to amalgamate with another insurance company or to transfer its business to another office, it must satisfy the provisions of sections 35 to 39 which are given below:

Amalgamation and transfer of insurance business.

35. (*1*) No life insurance business of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (*9*) of section 2 shall be transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and sanctioned by the Court having jurisdiction over one or other of the insurers concerned.

(*2*) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(*3*) Before an application is made to the Court to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor shall, at least two months before the application is made, be sent to the Central Government, and certified copies of the following

documents shall be furnished to the Central Government and shall during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch offices and chief agencies of the insurers concerned, namely:—

(*a*) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer;

(*b*) statements of the assets and liabilities of the insurers concerned in such amalgamation or transfer; and

(*c*) the actuarial or other reports on which the scheme was founded including a report by an independent actuary on the proposed amalgamation or transfer.

(*4*) Where an application under sub-section (*3*) is made to the Court within three months from the commencement of this Act, the Court may, on application, extend for the insurer whose business is to be transferred to or amalgamated with the business of another insurer, the time allowed for registration [1][under section 3 and for the payment of the instalments of the deposit under section 7 or section 98] for such period not exceeding nine months as the Court may think fit.

[1] These words and figures were substituted for the words and figures "and for the payment of the first instalment of the deposit under sections 3 and 7" by s. 13 of the Insurance (Amendment) Act, 1939 (11 of 1939).

36. When any aplication such as is referred to in sub-section (*3*) of section 35 is made to the Court, the Court shall cause, if for special reasons it so directs, notice of the application to be sent to every person resident in British India or in an Indian State who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct, and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom it considers entitled to be heard, may sanction the arrangement, if it is satisfied that no sufficient objection to the arrangement has been established.

Sanction of amalgamation and transfer by Court.

37. Where an amalgamation takes place between any two or more insurers, or where any business of one insurer is transferred to another, whether in accordance with a scheme confirmed by the Court or otherwise, the insurer carrying on the amalgamated business or the insurer to whom the business is transferred, as the case may be, shall, within three months from the date of the completion of the amalgamation of transfer, furnish to the Central Government—

Statements required after amalgamation and transfer.

(*a*) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected, and

(*b*) a declaration signed by every insurer concerned or in the case of a company by the

chairman and the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer, and

(*c*) where the amalgamation or transfer has not been made in accordance with a scheme confirmed by the Court—

(*i*) certified copies of statements of the assets and liabilities of the insurers concerned, and

(*ii*) certified copies of the actuarial or other reports upon which the agreement or deed was founded.

Assignment or Transfer of policies and Nominations

38. (*1*) A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

Assignment and transfer of insurance policies.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but [2][except where the transfer or assignment is in favour of the insurer] shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured hereby until a notice in writing of the transfer or assignment [1][together with either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents] has been delivered to the insurer[3] * * *

[4][Provided that where the insurer maintains one or more places of business in British India, such notice shall be delivered only at the place in British India mentioned in the policy for the purpose or at his principal place of business in British India.]

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under

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[2] These words were inserted by s. 14 of the Insurance (Amendment) Act 1939 (11 of 1939).

[3] The words "at his principal place of business in British India by or on behalf of the transferor or transferee" were omitted, *ibid.*

[4] This proviso was added, *ibid.*

such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgment of the receipt of such notice, and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(5) [5][Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (2),] recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person entitled to benefit under the policy, and such person shall be subject to all liabilities and equiries to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

[5] These words, brackets and figures were substituted for the words, brackets and figures "From the date of the receipt of the notice referred to in sub-section (2), the insurer shall," by s. 14 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(6) [6][Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section.]

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the [7][lifetime of the person whose life is insured], and an assignment in favour of the survivor or survivors of a number of persons, shall be valid.

Nomination by policyholder.

39. (1) The holder of a policy of life insurance [8][on his own life, not being an absolute assignee of the benefits under the policy,] may, when effecting the policy, or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy com-

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[6] This sub-section was substituted by s. 14 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[7] These words were substituted for the words "life of the policy-holder," *ibid.*

[8] These words were inserted by s. 15, *ibid.*

municated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be [9][but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.]

(*3*) [10][The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.]

(*4*) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination.

(*5*) Where the policy matures for payment during the [11][lifetime of the person whose life is insured] or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

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[9] These words were added, *ibid.*

[10] These words were added, *ibid.*

[1] These words were inserted, *ibid.*

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the [12][person whose life is insured], the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies.

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[12] These words were substituted for the words "lifetime of the policyholder," *ibid.*

F. 22

CHAPTER 32

PROVISIONS APPLICABLE TO INSURANCE AGENTS

The Indian Insurance Act contains some very important provisions relating to the functions and remuneration of insurance agents.

It has been laid down in the Act that in the case of life insurance no agent shall be paid more than 40% of the first year's premium as the procuration commission and not more than 5% as the renewal commission; while in the case of non-life business, the commission is not to exceed 15% of the premium. This measure is intended to keep the cost of obtaining business within proper limits.

The Act also prohibits *rebating*. It is doubtful if the legislation of this type can put a complete stop to the bad practice of rebating; but it is bound to discourage it in a very definite matter. Any person making default in this connexion is liable to a fine up to one hundred rupees.

The licensing of agents has also been made compulsory. Every insurance agent has to obtain a licence from the Superintendent of Insurance on the payment of a fee which must not exceed Re. 1. The Act has followed the American model in this respect.

The relevant sections relating to agents are from 40 to 44. They are reproduced below.

Prohibition of payment by way of commission or otherwise for procuring business.

40. (*1*) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent [1] * [2] * * * of a person acting on behalf of an insurer who for the purposes of insurance business employs[1]* insurance agents.

(*2*) No insurance agent * * * [3] shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium, or, in the case of business of any other class, fifteen per cent. of the premium:

Provided that insurers, in respect of life insurance business only, may pay, during their first ten years of their business, to their insurance agents fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent, of the renewal premiums.

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[1] The word "licensed" was omitted by s. 16 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[2] The words and figures "under section 42" were omitted, *ibid.*

[3] The words and figures "licensed under section 42" were omitted, *ibid.*

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission to [4][any person, whether an insurance agent within the meaning of this Act or not,] or to his representatives after his dicease in respect of insurance business effected through him before the said date.

Prohibition of rebates.

41. (1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to effect or renew an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing a policy accept any rebate except such rebate as may be allowed in accordance with the published prospectus or tables of the insurer.

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to one hundred rupees, unless the default is made by a person effecting or renewing a policy, in which case he shall be punishable with fine which may extend to fifty rupees only.

Licensing of insurance agents.

42. (1) The Superintendent of Insurance or an officer authorised by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee which shall not be more than one rupee, issue to any in-

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[4] These words were substituted for the words "an insurance agent," *ibid.*

dividual making an application under this section and not suffering from any of the disqualifications hereinafter mentioned a licence to act an insurance agent for the purpose of soliciting or procuring insurance business.

(*2*) A licence issued under this section shall entitle the holder to act as an insurance agent for any registered insurer.

(*3*) A licence issued under this section shall expire on the 31st day of March in each year, but shall, if the applicant does not suffer from any of the disqualifications hereinafter mentioned, be renewed from year to year on payment of a fee of one rupee.

(*4*) The disqualifications above referred to shall be the following:—

(*a*) that the person is a minor;

(*b*) that he is found to be of unsound mind by a Court of competent jurisdiction;

(*c*) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating by a Court of competent jurisdiction;

(*d*) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an assured.

(5) If it be found that an insurance agent suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Superintendent of Insurance shall, and if the agent has knowingly contravened any provision of this Act may, cancel the licence issued to the agent under this section.

43. (1) Every insurer and every person who acting on behalf of an insurer employs licensed insurance agents shall maintain a register showing the name and address of every licensed insurance agent apointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

Register of insurance agents.

(2) Any individual not holding a licence issued under section 42 who acts as an insurance agent shall be punishable with fine which may extend to fifty rupees, and any insurer who, or any person acting on behalf of an insurer who, appoints as an insurance agent any individual not so licensed, or transacts any insurance business in India through any such individual, shall be punishable with fine which may extend to one hundred rupees.

(3) The provisions of sub-section (2) shall not take effect until the expiry of six months from the commencement of this Act.

44. Notwithstanding anything to the contrary in a contract between any person and an insurance agent licensed under section 42 forfeiting or stopping payment of renewal commis-

Prohibition of cessation of payments of commission.

sion to such insurance agent, no such person shall in respect of life insurance business done in India refuse payment to an insurance agent of commission on renewal premiums due to him under the agreement by reason only of the termination of his agreement except for fraud:

Provided that such agent has served such person continually and exclusively for at least ten years, and provided further that, after his ceasing to act as agent, he does not directly or indirectly solicit or procure insurance business for any other person.

CHAPTER 33

SPECIAL PROVISIONS OF LAW

The Act contains some special provisions which are very sginificant. It contains an altogether new provision that a policy cannot be called in question on ground of misstatement after two years from the date of its issue. This seems to run counter to the doctrine of utmost good faith, which it appears to modify and limit.

In order to enable the policy-holders of a company to have control on the affairs of an iusurance company, it has been laid down in the Act that not less than 25% of the total number of directors must be elected by policy-holders.

Further, an insurer is now required to give notice to the policyholder, prior to the lapsing of his policy, informing him of the options available to him.

Another important provison of the Act is the prohibition of business on dividing principle, that is, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits.

Sections 53 to 61 govern the winding up of Indian insurance companies.

The Act also contains some special provisions relating to external companies. It empowers Central

Government to impose reciprocal disabilities on non-Indian companies. Certain particulars are also required to be filed by insurers established outside British India. Such insurers are also to maintain certain books mentioned in the Act.

Full details regarding all these provisions can best be known from a perusal of the following sections.

Policy not to be called in qusstion on ground of mis-statement after two years.

45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter and fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false.

Application of British Indian law to policies issued in British India.

46. The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in British India after the commencement of this Act shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating therto, to receive payment in

British India of any sum secured thereby and to sue for any relief in respect of the policy in any Court of competent jurisdiction in British India; and if the suit is brought in British India any question of law arising in connection with any such policy shall be determined according to the law in force in British India.

Payment of money into Court.

47. (*1*) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount, the insurer shall before the expiry of nine months from the date of the maturing of the policy [1][or, where the circumstance are such that the insurer cannot be immediately aware of such maturing, from the date on which notice of such maturing is given to the insurer,] apply to pay the amount into the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise.

(*2*) A receipt granted by the Court for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount.

(*3*) An application for permission to make a payment into Court under this section shall be made by a petition verified by an affidavit signed by a principal

[1] These words were inserted by s. 18 of the Insurance (Amendment) Act, 1939 (11 of 1939).

officer of the insurer setting forth the following particulars, namely:—

(*a*) the name of the insured person and his address;

(*b*) if the insured person is deceased, the date and place of his death;

(*c*) the nature of the policy and the amount secured by it;

(*d*) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received;

(*e*) the reasons why in the opinion of the insurer a satisfactory discharge cannot be obtained for the payment of the amount; and

(*f*) the address at which the insurer may be served with notice of any proceeding relating to disposal of the amount paid into Court.

(4) An application under this section shall not be entertained by the Court if the application is made before the expiry of six months [2][from the maturing of the policy by survival, or from the date of receipt of notice by the insurer of the death of the insured, as the case may be].

(5) If it appears to the Court that a satisfactory discharge for the payment of the amount cannot other-

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[2] These words were substituted for the words "from the death of the insured, or the maturing of the policy by survival" by s. 18 of the Insurance (Amendment) Act, 1939 (11 of 1939).

wise be obtained by the insurer it shall allow the amount to be paid into Court and shall invest the amount in Government securities pending its disposal.

(*6*) The insurer shall transmit to the Court every notice of claim received after the making of the application under sub-section (3), and any payment required by the Court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into Court shall as to the costs of the application under sub-section (*3*) be borne by the insurer and as to any other costs be in the discretion of the Court.

(7) The Court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into Court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claimant.

(8) The Court shall decide all questions relating to be disposal of claims to the amount paid into Court.

Directors of insurers being companies.

48. (*1*) Where the insurer is a company incorporated under the Indian Companies Act, 1913, [3][or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] and carries on the business of life insurance, not less than one-fourth of the whole number of the directors of the company shall be persons having the prescribed qualifications and holding policies of life insurance issued by the company, and shall be elected to the Board

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[3] These words and figures were inserted by s. 19, *ibid.*

of Directors of the company in the prescribed manner by the holders of policies of life insurance issued by the company.

(2) [4][This section shall not take effect, in respect of any company in existence at the commencement of this Act, until the expiry of one year therefrom, and in respect of any company incorporated after the commencement of this Act, until the expiry of two years from the date of registration to carry on life insurance business.]

Restriction on dividends and bonuses.

49. No insurer, being an insurer specified to sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, who carries on the business of life insurance shall in respect of such life insurance business declare or pay any dividend to shareholders or any bonus to policy-holders except out of a surplus ascertained as the result of an actuarial valuation of the assets and liabilities of the insurer.

Notice of options available to the assured on the lapsing of a policy

50. An insurer shall, [5][before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid], give notice to the policy-holder informing him of the options available to him.

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[4] This sub-section was substituted by s. 19 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[5] These words were substituted for the words "within three months of the lapsing of a policy of life insurance" by s. 20, *ibid.*

Supply of copies of proposals and medical reports.

51. Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith.

Prohibition of business on dividing principle.

52. No insurer shall after the commencement of this Act begin, or after three years from that date continue to carry on, any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical acturial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise:

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withhold from distribution a sum of not less than forty per cent. of the premiums received during each year after the commencement of this Act in which such business is continued so

as to make up the amount required for investment under section 27.

WINDING UP

Winding up by the Court.

53. (*1*) The Court may order the winding up in accordance with the Indian Companies Act, 1913, of any insurance company and the provisions of that Act shall, subject to the provisions of this Chapter, apply accordingly.

(*2*) In addition to the grounds on which such an order may be based, the Court may order the winding up of an insurance company—

(*a*) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or

(*b*) if the Superintendent of Insurance, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely:—

(*i*) that the company has failed to deposit or to keep deposited with the Reserve Bank

of India the amounts required by section 7 [6][or section 98],

(*ii*) that the company having failed to comply with any requirement of this Act has continued such failure for a period of three months after notice of such failure has been conveyed to the company by the Superintendent of Insurance,

(*iii*) that it appears from the returns furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is insolvent, or

(*iv*) that the continuance of the company is prejudicial to the interests of the policy-holders.

Voluntary winding up.

54. Notwithstanding anything contained in the Indian Companies Act, 1913, an insurance company shall not be wound up voluntarily except for the purpose of effecting an amalgamation or a re-construction of the company, or on the ground that by reason of its liabilities it cannot continue its business.

Valuation of liabilities.

55. (*1*) In the winding up of an insurance company or in the insolvency of any other insurer the value of the assets and the liabilities of the insurer shall be ascertained in such

[6] These words and figures were inserted by s. 21 of the Insurance (Amendment) Act, 1939 (11 of 1939).

manner and upon such basis as the liquidator or receiver in insolvency thinks fit, subject, so far as applicable, to the rule contained in the Sixth Schedule and to any directions which may be given by the Court.

(2) For the purposes of any reduction by the Court of the amount of the contracts of any insurance company the value of the assets and liabilities of the company and all claims in respect of policies issued by it shall be ascertained in such manner and upon such basis as the Court thinks proper having regard to the rule aforesaid.

(3) The rule in the Sixth Schedule shall be of the same force and may be repealed, altered or amended as if it were a rule made in pursuance of section 246 of the Indian Companies Act, 1913, and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies.

Application of surplus assets of life insurance fund in liquidation or insolvency.

56. (1) In the winding up of an insurance company and in the insolvency of any other insurer the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life insurance business.

(2) In the winding up of an insurance company carrying on the business of life insurance or in the insolvency of any other insurer carrying on such business where any proportion of the profits of the insurer was before the commencemnnt of the winding up or insolvency allocated to policy-holders, if, when the assets and liabilities of the insurer have been ascertained, there is found to be a surplus of assets over liabilities (hereinafter to as a *prima facie* surplus) there shall be added to the liabilities of the insurer in respect of the life insurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to shareholders and policy-holders as was allocated to policy-holders during the ten years immediately preceding the commencement of the winding up and the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition:

Provided that—

(*a*) if in any case there has been no such allocation or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct, and

(*b*) for the purpose of the application of this sub-section to any case where before the

commencement of the winding up or insolvency a proportion of such profits as aforesaid of a branch only of the life insurance business in question has been allocated to policy-holders, the value of the assets and liabilities of the insurer in respect of that branch shall be separately ascertained in like manner as the value of his assets and liabilities in respect of the life insurance business was ascertained, and the surplus so found, if any, of assets over liabilities shall, for the purpose of determining the amount to be added to the liabilities of the insurer in respect of the life insurance business be deemed to be the *prima facie* surplus.

Winding up of secondary companies.

57. (*1*) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the

two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company.

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the secondary company.

(3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributaries in the case of the winding up of a single company or as near thereto as circumstances admit.

(4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary, the court shall not direct the secondary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any secondary company in conjunction with the principal company by any creditor of, or person interested in, the principal or secondary company.

(6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.

Schemes for partial winding up of insurance companies.

58. (1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act.

(2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding up), for any future rights of every class of policy-holders in respect of their policies and for the manner of winding up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with

respect to its objects and such further provisions as may be expedient for giving effect to the scheme.

(3) The provisions of this Act relating to the valuation of liabilities of insurers in liquidation and insolvency and to the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and any scheme under this section may apply with the necessary modifications any of the provisions of the Indian Companies Act, 1913, relating to the winding up of companies.

(4) An order of the Court confirming a scheme under this section whereby the memorandum of a company is altered with respect to its object shall as respect the alteration have effect as if it were an order confirmed under section 12 of the Indian Companies Act, 1913, and the provisions of sections 15 and 16 of that Act shall apply accordingly.

Return of deposits.

59. In the winding up of an insurance company and in the insolvency of any other insurer the liquidator or assignee as the case may be shall apply to the Court for an order for the return of the [7][deposit made by the company or the insurer, as the case may be, under section 7 or section 98] and the Court shall on such application order

[7] These words and figures were substituted for the words and figures "deposit made by the company under section 7" by s. 22 of the Insurance (Amendment) Act, 1939 (II of 1939).

a return of the deposit subject to such terms and conditions as it shall direct.

Notice of policy values.

60. In the winding up of an insurance company for the purposes of a cash distribution of the assets and in the insolvency of any other insurer the liquidator or assignee as the case may be in the case of all persons appearing by the books of the company or other insurer to be entitled to or interested in the policies granted by the company or other insurer shall ascertain the value of the liability of the company or other insurer to each such person and shall give notice of such value to those persons in such manner as the Court may direct and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in such manner and within such time as may be specified by a rule or order of the Court.

Power of Court to reduce contracts of insurance.

61. (*1*) Where an insurance company is in liquidation or any other insurer is insolvent the Court may make an order reducing the amount of the insurance contracts of the company or other insurer upon such terms and subject to such conditions as the Court thinks just.

(*2*) Where a company carrying on the business of life insurance has been proved to be insolvent, the Court may if it thinks fit in place of making a winding up order reduce the amount of the insurance contracts of the company upon such terms and subject to such conditions as the Court thinks fit.

(3) Application for an order under this section may be made either by the liquidator or by or on behalf of the company or by a policy-holder , or by the Superintendent of Insurance and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application.

SECIAL PROVISIONS RELATING TO EXTERNAL COMPANIES

Power of Central Government to impose reciprocal disabilities on non-Indian companies.

62. Where, by the law or practice of any country outside India in which an insurer carrying on insurance business in British India is constituted, incorporated or domiciled, insurance companies incorporated in British India are required as a condition of carrying on insurance business in that country to comply with any special requirement whether as to the keeping of deposits of assets in that country or otherwise which is not imposed upon insurers of that country under this Act, the Central Government shall, if satisfied of the existtence of such special requirement, by notification in the official Gazette, direct that the same requirement, or requirements as similar thereto as may be, shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in British India.

Particulars to be filed by insurers established out ide British India.

63. Every insurer, having his principal place of business or domicile outside British India, who establishes a place of business within British India, or appoints a representative in British India with the object of obtain-

ing insurance busines, shall within three months from the establishment of such place of business or the appointment of such [8][representative], file with the Superintendent of Insurance—

(*a*) a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instrument constituting or defining the constitution of the insurer, and, if the instrument is not written in the English language, a certified translation thereof,

(*b*) a list of the directors, if the insurer is a company,

(*c*) the name and address of some one or more persons resident in British India authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer, together with a copy of the power of attorney granted to him,

(*d*) the full address of the principal office of the insurer in British India,

(*e*) a statement of the classes of insurance business to be carried on by the insurer, and

(*f*) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in section 62 imposed in the country of origin of the insurer on Indian nationals,

and, in the event of any alteration being made in the address of the principal office or in the classes of busi-

ness to be carried on, or in any instrument here referred to, or in the name of any of the persons here referred to, or in the matters specified in clause (*f*) above, the company shall forthwith furnish to the Superintendent of Insurance particulars of such alteration.

Books to be kept by insurers established outside British India.

64. Every insurer having his principal place of business or domicile outside British India shall keep at his principal office in British India such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Superintendent of Insurance in respect of the insurance business transacted by him in India to be compiled and, if necessary, checked by the Superintendent of Insurance.

CHAPTER 34

PROVIDENT SOCIETIES

Definition of "provident society."

65. In this Part "provident society" means a person who, or a body of persons whether corporate or [1][unincorporate] which, receives premiums or contributions for securing annuities on human life or receives premiums or contributions for insuring money to be paid on the happening of any of the following contingencies, namely:—

(*a*) the birth, marriage, death of any person or the survival by a person of a stated age or contingency;

(*b*) failure of issue;

(*c*) the occurrence of a social, religious or other ceremonial occasion;

(*d*) loss of or retirement from employment;

(*e*) disablement in consequence of sickness or accident;

(*f*) the necessity of providing for the education of a dependent; and

(*g*) any other contingency which may be prescribed or which may be authorised by the Provincial Government with the approval of the Central Government.

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[1] This word was substituted for the word "incorporate" by s. 24 of the Insurance (Amendment) Act, 1939 (11 of 1939).

66. Nothing in this Part shall apply to a provident society which pays or undertakes to pay on any policy of insurance an annuity exceeding fifty rupees or a gross sum exceeding five hundred rupees exclusive of any profit or bonus:

Application of this Part.

Provided that for the purposes of this section contracts entered into before the commencement of this Act shall not be taken into consideration and provided further that "policy" includes a series of policies covering one or more of the contingencies specified in section 65.

67. No provident society established after the commencement of this Act shall adopt as its name, and no provident society established before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name, any combination of words which fails to include the word "provident" or which includes the word "life."

Name.

68. No provident society shall receive any premium or contribution for insuring money to be paid to any person other than the person paying such premium or contribution or the wife, husband, child, grand-child, parent, brother or sister, nephew or niece of such a person.

Insurable interest.

69. (*1*) No provident society shall carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly, on the results of a distribution,

Dividing business.

amongst policies maturing for payment within certain time-limits, of certain sums.

(2) The Superintendent of Insurance shall, as soon as possible, take steps to have any provident society which carries on business on the dividing principle wound up:

Provided that, where any such provident society in existence at the commencement of this Act applies within three months of such commencement to the Superintendent of Insurance for permission to continue carrying on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act, the Superintendent of Insurance may at his discretion, with due regard to the past history of the society, permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society.

Registration.

70. (1) No provident society except a provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall receive any premium or contribution until it has obtained from the Superintendent of Insurance a certificate of registration.

(2) Every application for registration shall be accompanied by—

(a) a certified copy of the rules of the society, and when the society is a company incorporated under the Indian Companies Act, 1913, a certified copy of the Memorandum

and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society;

(*b*) the names and addresses of the proprietors or directors, and the managers of the society;

(*c*) a certificate from the Reserve Bank of India that the initial deposit referred to in section 73 has been made; and

(*d*) a declaration verified by an affidavit that the minimum working capital required by section 72 is available.

(*3*) The Superintendent of Insurance may refuse to issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the minimum working capital required by section 72 is available, but if he is so satisfied he shall register the society and its rules.

(*4*) The Superintendent of Insurance may, after giving previous notice in writing in such manner as he thinks fit specifying the grouuds for the proposed cancellaton, and allowing the society concerned an opportunity of being heard, apply to the Court and obtain sanction for cancellation of the registration made under this section or made under the provisions of the Provident Insurance Societies Act, 1912,—

(*a*) if he is satisfied as the result of an inquiry made under section 87—

(*i*) that the society is insolvent or is likely to become so, or

(*ii*) that the business of the society is conducted fraudulently or not in accordance with the rules thereof, or that it is in the interests of the policy-holders that the society should cease to carry on business.

(*b*) if the initial deposit or any of the further deposits required in section 73 has not been made, or

(*c*) if the society, having failed to comply with any requirement of this Act, has continued such failure for a period of one month after notice of such failure has been conveyed to the society by the Superintendent of Insurance:

Provided that the Superintendent of Insurance may, if he thinks fit, instead of applying for cancellation of the registration under sub-clause (*i*) of clause (*a*) of this sub-section make a recommendation to the Court that the contracts of the society should be reduced in such manner and subject to such conditions as he may indicate.

Prohibition of managing agents.

71. The provisions of section 32 shall apply to provident societies as they apply to insurers.

Working capital.

72. No provident society established after the commencement of this Act shall be registered unless it has a paid up capital sufficient to provide as working capital a net sum of not

less than five thousand rupees exclusive of deposits made under this Act and exclusive in the case of a company of any expenses incurred in connection with the formation of the company.

Deposits.

73. (*1*) Every provident society shall, if established before the commencement of this Act within one year from such commencement, or, if established after the commencement of this Act before the society applies for registration under section 70, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank, for and on behalf of the Central Government, cash or approved securities amounting at the market value of the securities on the date of deposit to five thousand rupees, and shall thereafter [2][make in each calendar year] a further deposit amounting to not less than one-fifth of the gross premium [3][income for the preceding calendar year] (including admission fees and other fees received by the society) until the total amount so deposited and kept is fifty thousand rupees.

(*2*) The provisions of sub-sections (8), (*9*) and (*10*) of section 7 and of sub-section (*1*) of sectoin 8 shall apply to the deposits made under this section as they apply to deposits made by an insurer.

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[2] These words were substituted for the words "make each year" by s. 25 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[3] These words were substituted for the words "income for the year," *ibid.*

Rules.

74. (1) Every provident society established after the commencement of this Act shall in its rules set forth—

(*a*) the name, the object and the location of the registered office of the society;

(*b*) the contingencies or classes of contingency on the happening of which money is to be paid;

(*c*) the conditions to be complied with before, and the payments to be made on, admission to the society;

(*d*) the rates of premium or contribution, and the periods for which or the times at which premiums or contributions are payable;

(*e*) the maximum amount payable to a subscriber or policy-holder;

(*f*) the nature and amounts of the benefits provided for by the society;

(*g*) the circumstances in which a bonus may be paid to a policy-holder;

(*h*) the nature of the evidence required for the proof of the happening of any contingency on which money is to be paid;

(*i*) the circumstances in which policies may be forfeited or renewed or the whole or a part of the premiums paid on a policy may be returned, or a surrender value of a policy may be granted;

(*j*) the penalties for delay in paying or failure to pay premiums or contributions;

(*k*) the proportion of the annual income of the society which may be disbursed on and the provisions to be made for meeting the expenses of the management of the society;

(*l*) the person or persons who or the authority which shall have power to invest the funds of the society;

(*m*) the provisions for appointment of auditors and their remuneration;

(*n*) the procedure to be adopted in altering the rules of the society;

(*o*) unless these are provided for in the articles of association of a society which is a company incorporated under the Indian Companies Act, 1913,—

(*i*) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society;

(*ii*) the manner of raising additional capital;

(*iii*) the provisions for the holding of general meetings of the members and policy-holders and for the powers to be exercised and the procedure to be followed thereat; and

(*p*) such other matters as may be prescribed.

(2) Where the rules of any provident society registered under the Provident Insurance Societies Act, 1912, fail to comply with the provisions of this section the society shall, before the expiry of twelve months from the commencement of this Act, amend the rules so as to comply with these provisions.

75. (1) No amendment of any rule of a provident society shall be valid until it has been sent to the Superintendent of Insurance and has been registered by him.

Amendment of rules.

(2) The Superintendent of Insurance on being satisfied that the proposed amendment is not contrary to the provisions of this Act shall, unless he is of opinion that the amendment unfairly affects the rights of existing members or policy-holders of the society, issue to the society an acknowledgment of the registration of the amended rule.

76. Every provident society shall on demand deliver free of cost to any member of the society a copy of the rule of the society and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

Supply of copy of rules.

77. Every provident society shall have an office (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all communications and notices may be addressed, and shall give notice to the Superintendent of Insurance of any change in the location thereof within twenty-eight days of its occurrence.

Registered office.

78. Where any notice, advertisement or other official publication of a provident society contains a statement of the amount of the authorised capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Publication of authorised capital to contain also subscribed and paid-up capital.

79. Every provident society shall keep at its registered office—

Registers and books.

(*a*) a register of members in which shall be entered the name, address and occupation, if any, of every proprietor, director, manager or secretary and of every member of the society;

(*b*) a register or record of policies in which shall be enetered, in respect of every policy issued by the society, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the society has notice;

(*c*) a register of claims in which shall be entered every claim made, together with the date of the claim, the name and address of the claimant and the date on which the claim is discharged or in the case of a claim which is rejected the date of rejection and the grounds therefor;

(*d*) a register of agents in which shall be enter-

ed the name and address of every agent employed by the society;

(*e*) a cash book in which shall be entered separately for each class of contingency separately specified in section 65 all sums received and expended by the society and the matters in respect of which the receipt or expenditure takes place;

(*f*) a ledger.

80. (*1*) Every provident society shall at the expiry of the calendar year prepare a revenue account and balance-sheet in the prescribed form verified in the prescribed manner, together with a report on the general state of the society's affairs and shall cause the revenue account and balance-sheet to be audited by an auditor, and the auditor shall so far as may be in the audit of a provident society have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities imposed on, an auditor of companies by section 145 of the Indian Companies Act, 1913.

Revenue account. balance-sheet and annual statements.

(*2*) Every provident society shall at the expiry of the calendar year prepare with respect to that year—

(*a*) a statement showing separately for each class of contingency separately specified in section 65—

(*i*) the number of new policies effected, the total premium income received in respect

thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and

(*ii*) the total amount of claims made and the total amount paid in satisfaction thereof;

(*b*) a statement showing details of every insurance effected on a life other than the life of the person insuring; and

(*c*) a statement showing the total amount paid as allowances to agents and canvassers.

(*3*) Until the expiry of two years from the commencement of this Act this section [4][and section 73] shall apply to provident societies registered before the commencement of this Act under the Provident Insurance Societies Act, 1912, as if the reference to the calendar year were a reference to either the financial year or the calendar year.

Actuarial report and abstract.

81. (*1*) Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made into its financial condition including the valuation of its liabilites and assets by an actuary.

(*2*) The report of the actuary shall contain an abstract in which shall be stated—

(*a*) the general principles adopted in the valua-

[4] These words and figures wert inserted by s. 26 of the Insuranct (Amendment) Act, 1939 (11 of 1939).

tion, including the method by which the valuation age of lives was ascertained,

(*b*) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation,

(*c*) the reserve values held against policies effected,

(*d*) the rate of interest assumed, and

(*e*) the provision made for expenses,

and shall have appended to it a certificate signed by a principal officer of the society that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(*3*) If the actuary finds that the financial condition of the society is such that no surplus exists for distribution as bonus to the policy-holders or as divided to the shareholders, he shall state in his report whether in his opinion the society is insolvent and, if so, whether it should be wound up or not, and the extent to which in his opinion existing contracts should be modified or existing rates of premium should be adjusted to make good the deficiency in the assets.

Submission of returns to Superintendent of Insurance.

82. (*1*) The revenue account and balance-sheet with the auditor's report thereon and the report on the general state of the society's affairs referred to in sub-section (*1*) of section 80, and the statements referred to in

sub-section (*2*) of section 80, shall be furnished as returns to the Superintendent of Insurance within three months from the end of the period to which they relate and copies of the revenue account and balance-sheet and the auditor's report thereon and of the report on the general state of the society's shall, on the application of any member or policy-holder made within two years from the date on which the document was so furnished, be sent to him within fourteen days from the receipt of the application on payment of a fee of one rupee.

(2) All the material necessary for the proper valuation of the liabilities of the society under the provisions of section 81 shall be placed at the disposal of the actuary within three months from the end of the period to which such material relates, and the report and abstract referred to in section 81 shall be furnished as a return to the Superintendent of Insurance within a further period of three months.

(*3*) The provisions of section 17 shall apply to the accounts and balance-sheet of a provident society being a company incorporated under the Indian Companies Act, 1913, [8][or under the Indian Compnaies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,] as they apply to the accounts and balance-sheet of an insurer.

83. (*1*) Every provident society, established

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[8] These words and figures were inserted by s. 27 of the Insurance (Amendment) Act, 1939 (11 of 1939).

after the commencement of this Act, shall cause every scheme of insurance which it proposes to put into operation, and every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912, shall cause any new scheme which it proposes to put into operation after such commencement to be examined by an actuary, and shall not receive any premium or contribution in connection with the scheme until the actuary has certified that the scheme is sound and such certificate has been forwarded to the Superintendent of Insurance.

Actuarial examination of schemes.

(2) The provisions of sub-section (1) shall apply to any alteration of a scheme already in operation, but the Superinendent of Insurance may, if he is of opinion that the alteration unfairly affects the interests of existing policy-holders, prohibit the alteration, and, if he does so, the society shall not put the altered scheme into operation, unless it first discharges to the satisfaction of the Superintendent of Insurance all its liabilities to those of the existing policy-holders who dissent from the alteration.

(3) Every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912, shall, as soon as may be and in any event before the expiry of six months from the commencement of this Act, submit all schemes of insurance which the society has in operation at the commencement of this Act to examina-

tion by an actuary and shall send the report of the actuary thereon to the Superintendent of Insurance.

(4) The report of the actuary shall state in respect of each scheme whether it is actuarially sound, and, where no acturial report such as is referred to in section 81 has been made within the two years preceding the examination, the report shall also state whether the assets of the society are sufficient to meet its liabilities under the existing schemes, and, if not, how in the opinion of the actuary the existing contracts should be modified.

(5) If any scheme is reported by the actuary to be actuarially unsound, the Superintendent of Insurance shall give notice to the society prohibiting the operation of the scheme; and the society shall not receive any premium or contribution or effect any policy in connection with the scheme after the expiry of one month from the receipt of such notice.

(6) Where a scheme is discontinued under the provisions of sub-section (5) the society shall, where its assets are sufficient to meet all existing liabilities, set apart out of its assets the sum sufficient in the opinion of the actuary to meet the liabilities incurred under the scheme so discontinued, and, where its assets are not so sufficient, within three months from the date of the discontinuance, apply to the Court for a modification of its existing contracts or failing such modification for the winding up of the society.

84. Where a provident society effects policies of

insurance in connection with more than one of the classes of contingency separately specified in section 65, the receipts and payments in respect of each such class shall be recorded in a separate account in the cash book kept in accordance with section 79.

Separation of accounts and funds.

85. (*1*) Every provident society shall, unless it already holds invested in Government securities or securities mentioned or referred to in clauses (*c*) and (*d*) of section 20 of the Indian Trusts Act, 1882, not less than fifty per cent of the total assets of the society, invest all surplus assets in such securities until the total amount so invested amounts to not less than fifty per cent of the total assets of the society, and shall thereafter keep invested in such securities not less than fifty per cent of the total assets of the society.

Investment of funds.

(*2*) No funds or investments of a provident society except a deposit made under section 73 shall be kept otherwise than in the name of the society [6][or in the name of a public officer approved by the Central Government].

(*3*) No loan shall be made out of the assets of a provident society to any director or officer of the society except on the security of a policy of insurance held in the society and within its surrender value and no such loan shall be made to any concern of which a director or officer of the society is a director or partner.

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[6] These words were added by s. 28 of the Insurance (Amendment) Act, 1939 (II of 1939).

(*4*) Any director or officer of a society which contravenes the provisions of sub-section (*3*), who is knowingly a party to the contravention, shall without prejudice to any other penalty which he may incur be jointly and severally liable to the society for the amount of the loan, and such amount, together with interest from the date of the loan at such rate not exceeding twelve per cent per annum as the Superintendent of Insurance may fix, shall on application by the Superintnedent of Insurance to any civil Court of competent jurisdiction be recoverable by execution as if a decree for such amount had been passed by that Court.

86. The books of every provident society shall at all reasonable times be open to inspection by the Superintendent of Insurance or any person appointed by him in this behalf or by any member or policy-holder of the society who has made an application in this behalf to the Superintendent of Insurance.

Inspection of books.

87. (*1*) The Superintendent of Insurance shall at least once in two years and may, if he thinks fit, at any time visit personally or depute a suitable person to visit the principal office of a provident society and inquire into the solvency of the society and the manner in which the business of the society is conducted, or may, after giving notice to the society and giving it an opportunity to be heard, direct such an inquiry to be made by an auditor or actuary appointed by him.

Inquiry by or on behalf if Superintendent of Insurance.

(*2*) For the purposes of any such inquiry the

Superintendent or the auditor or actuary, as the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanations as he may require on any matter relating to the affairs of the society.

(*3*) The results of any such inquiry shall be recorded in a report which shall be kept in the office of the Superintendent and a copy of the report shall be sent to the society concerned and shall be open to inspection by any member or policy-holder of the society.

Winding up by Court and voluntary winding up.

88. (*1*) The Court may order the winding up of a provident society being a company incorporated under the Indian Companies Act, 1913, and the provisions of that Act shall, subject to the provisions of this Part, apply accordingly.

(*2*) In addition to the grounds on which such an order may be based, the Court may order the winding up of a provident society, if the registration of the society is cancelled by the Superintendent of Insurance under sub-section (*4*) of section 70 and he applies for the winding up of the society.

(*3*) A provident society being a company incorporated under the Indian Companies Act, 1913, may be wound up voluntarily in accordance with the provisions of that Act, but shall not be so wound up except for the purpose of effecting an amalgamation or re-construction of the society or on the ground that by reason of its liabilities it cannot continue its business.

(4) A provident society not being a company incorporated under the Indian Companies Act, 1913, may be wound up voluntarily under this Act if a resolution is passed by the proprietors that the society should be wound up voluntarily for the purpose or on the ground specified in sub-section (3), and the Superintendent of Insurance may, in any case where he has ordered the cancellation of the registration of a society under sub-section (4) of section 70, order the winding up of the society under this Act.

Reduction of Insurance Contracts

89. The Court may make an order reducing the amount of the insurance contracts of a provident society upon such terms and subject to such conditions as the Court thinks just—

(a) if the Superintendent of Insurance as an alternative to cancelling the registration of a society under sub-section (4) of section 70 applies to the Court in this behalf;

(b) if while a society is in liquidation the Court thinks fit;

(c) if when a society has been proved to be insolvent the Court thinks fit to do so in place of making an order for the winding up of the society; or

(d) if the Court is satisfied on an application made in this behalf by the society supported by the report of an actuary, and after giving the policy-holders an opportunity to be heard that it is desirable to do so.

90. (*1*) Where a provident society is to be wound up whether under the Indian Companies Act, 1913, or under this Act, the society shall, within seven days from the date of the order of the Court ordering the winding up or the passing of the resolution authorising the winding up, as the case may be, give notice thereof to the Superintendent of Insurance, and, except where the winding up is done by an order of the Court, the Superintendent of Insurance shall appoint the liquidator and shall determine the remuneration to be paid to him.

Appointment of liquidator.

(*2*) Any liquidator so appointed may be removed by the Superintendent of Insurance if satisfied that the duties entrusted to him are not being properly discharged.

91. (*1*) A liquidator appointed to wind up a society shall have power—

Powers of liquidator.

(*a*) to institute or defend any legal proceedings on behalf of the society by his name of office;

(*b*) to determine the contribution to be made by members of the society respectively to the assets of the society;

(*c*) to investigate all claims against the society and to decide questions of priority arising between claimants;

(*d*) to determine by what persons and in what proportion the costs of the liquidation are to be borne;

(*e*) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

(*f*) to summon, and enforce the attendance of witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a civil Court by the Code of Civil Procedure, 1908; and

(*g*) with the sanction of the Superintendent of Insurance, to employ such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties.

(2) The liquidator shall, for settling the list of contributories and realising the amount of contributions, have the same powers as an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913.

Procedure at liquidation.

92. (1) As soon as a liquidator is appointed to wind up a society he shall take charge of all property movable or immovable of the society and of all its books and documents.

(2) If any proprietor or officer of the society or any other person retains any portion of the assets of the society or fails to deliver to the liquidator any book or document when so required by the liquidator, he shall be punishable with imprisonment which may ex-

tend to six months, or with fine which may extend to five hundred rupees, or with both, and the Court may order the delivery of the assets or book or document to the liquidator.

(3) The liquidator shall within fifteen days of his appointment send notice by post to all persons who appear to him to be creditors of the society that a meeting of the creditors of the society will be held on a date not being less than twenty-one nor more than twenty-eight days after his appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in the local official Gazette and once at least in two news-papers circulating in the province in which the society is situated.

(4) At the meeting so held the creditors shall determine whether an application shall be made for the appointment of any person as liquidator in the place of or jointly with the liquidator already appointed, or for the appointment of a committee of inspection, and, if they so resolve and an application accordingly is made at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting, the Superintendent of Insurance shall appoint a suitable person in place of or jointly with the liquidator already appointed, and if so desired, a committee of inspection.

(5) The committee of inspection shall, subject to any prescribed conditions, have a general power of supervision over the acts of the liquidator and shall have the right to inspect his accounts at all reasonable times.

(*6*) The liquidator shall, with such assistance from an actuary as may be required, ascertain as soon as practicable the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society, and shall give notice of the amount so found to each such person in the prescribed manner and each such person on receiving such notice shall be bound by the value so ascertained.

(7) The liquidator shall make a valuation of the assets of the society and an estimate of the costs of the winding up, and shall on the basis of these settle the list of contributories.

(8) The liquidator shall apply to the Superintendent of Insurance for an order for the return of the deposit made by the society under section 73 and the Superintendent of Insurance shall on such application order the return of the deposit subject to such terms and conditions as he may think fit.

(*9*) In administering and distributing the assets of the society the liquidator shall have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Superintendent of Insurance.

(*10*) The liquidator shall keep books of account in which he shall record the proceedings at all meetings attended by him, all amounts received or expended by him and any other matter that may be prescribed, and these books may, with the sanction of the Superinten-

dent of Insurance, be inspected by any creditor or contributory.

(*11*) If the winding up continues for more than a year, the liquidator shall summon a meeting of the creditors and contributories at the end of the first year and of each succeeding year, and shall lay before them an account of his acts and dealings and of the conduct of the winding up, and that account together with any views expressed thereon by the meeting shall be forwarded by the liquidator to the Superintendent of Insurance.

(*12*) So far as is not otherwise provided herein or is not otherwise prescribed under this Act, the liquidator shall so far as practicable follow the procedure to be followed by an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913.

Dissolution of provident society.

93. (*1*) As soon as the affairs of a provident society are fully wound up the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation thereof.

(*2*) Notice of the meeting shall be sent to each person individually and shall be advertised in the local official Gazette and in at least two newspapers circulating in the province in which the society is situated.

(3) Within one week after the meeting the liquidator shall send to the Superintendent of Insurance a copy of the account and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting.

(4) The Superintendent of Insurance may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Superintendent of Insurance within six months.

(5) If the Superintendent of Insurance is satisfied that the affairs of the society have been fully wound up he shall register account of the liquidator who shall forthwith make over to the Superintendent of Insurance sums, if any remaining undisposed of, and on the expiry of three months from the registering of the account the Superintendent of Insurance shall declare the society dissolved and cause the dissolution of the society to be notified in the local official Gazette, and the liquidator shall thereupon be discharged from further responsibility.

(6) If within a period of five years from the date on which any sums have been made over to the Superintendent of Insurance under sub-section (5) an order of a Court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal the said sums shall become the property of Government.

Nominations and assignments.

94. (*1*) The provisions of section 38 and section 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (*a*) of section 65.

(*2*) No nomination shall be valid if the person nominated is not the husband, wife, father, mother, child, grand-child, brother, sister, nephew or niece of the holder of the policy.

CHAPTER 35

MUTUAL INSURANCE COMPANIES AND CO-OPERATIVE LIFE INSURANCE SOCIETIES

Definitions. **95.** (*1*) In this Part—

(*a*) "Mutual Insurance Company" means an insurer, being a company [1][incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby] which has no share capital and of which by its constitution only and all policy-holders are members; and

(*b*) "Co-operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of co-operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application, the

[1] These words and figures were substituted for the words and figures "incorporated under the provisions of the Indian Companies Act, 1913," by s. 29 of the Insurance (Amendment) Act, 1939 (11 of 1939).

society is registered and all policy-holders are members:

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act.

(2) Notwithstanding anything contained in sub-section (1), other co-operative societies may be admitted as members of a Co-operative Life Insurance Society, without being eligible to any dividend, profit or bonus.

(3) A Provincial Government may, subject to any rules made by the Central Government, empower the Registrar of Co-operative Societies of the province to register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co-operative Societies Act in force in the province.

(4) A Provincial Government may make rules not inconsistent with any rules made by the Central Government to govern such societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies.

Application of Act to Mutual Insurance Companies and Co-operative Life Insurance Societies.

96. The provisions of sections 6 and 7 and of sub-section (2) of section 20, so far as those provisions are inconsistent, with the provisions of this Part, shall not apply, and the provisions of this Part shall apply, to Mutual Insurance Companies and Co-operative Life Insurance Societies.

Working capital of Mutual Insurance Companies and Co-operative Life Insurance Societies.

97. No Mutual Insurance Company incorporated after the 26th day of January, 1937, and no Co-operative Life Insurance Society registered after that date under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees, exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (*2*) of section 98 of this Act and of the preliminary expenses, if any, incurred in the formation of the company or society.

Deposits to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies.

98. (*1*) Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, in respect of the life insurance business carried on by it in British India, deposit and keep deposited with one of the offices in India of the Reserve Bank of India, for and on behalf of the Central Government, a sum of two hundred thousand rupees in cash in approved securities estimated at the market value of the securities on the day of deposit.

(*2*) The deposit referred to in sub-section (*1*) may be made in instalments, of which the first shall be a payment, made before or at the time the application for registration under this Act is made, of twenty-five thousand rupees or such sum as with any deposit previously made by the insurer under the provisions of

the Indian Life Assurance Companies Act, 1912, brings the amount deposited, up to twenty-five thousand rupees, and the subsequent instalments shall be annual instalments made before the expiry of each subsequent [2][calendar year] of an amount in cash or in approved securities estimated at the market value of the securities on the day of payment of the instalment, equal to one-third of the gross premium income received in the previous [2][calendar year].

Transferees and assignees of policies not to become members.

99. No transferee or assignee of a policy issued by an insurer to whom this Part applies shall become a member of a Mutual Insurance Company or a Co-operative Life Insurance Society merely by reason of any such transfer or assignment.

Publication of notices and documents of Mutual Insurance Companies and Co-operative Life Insurance Societies.

100. Notwithstanding the provisions of section 79 and section 131 of the Indian Companies Act, 1913, a Mutual Insurance Company or a Co-operative Life Insurance Society may, instead of sending the notices and the copies of the balance-sheet, revenue account and other documents which they are required to send to the members under those sections, publish such notices or documents once in a newspaper published in the English language and in a newspaper published in an Indian language circulating in the place where the pirncipal office of the company is situated:

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[2] These words were substituted for the word "year" by s. 30 of the Insurance (Amendment) Act, 1939 (11 of 1939).

Provided that, where any members of the company are domiciled in a province other than that in which the principal office of the company is situated, publication of the balance-sheet, revenue account and notice of the meetings shall be made in a newspaper or newspapers published in the principal languages of that province and circulating therein.

Supply of documents to members.

101. Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, on the application of any member made within two years from the date on which any such document is furnished to the Registrar of Companies under the provisions of section 134 of the Indian Companies Act, 1913, or to the Registraar of Co-operative Societiės of the province in which the Co-operative Life Insurance Society is registered, furnish a copy of the document free of cost to the member within fourteen days of the application.

CHAPTER 36

MISCELLANEOUS

Penalty for default in complying with, or act in contravention of, this Act.

102. (*1*) Except as otherwise provided in this Act, an insurer who makes default in complying with or acts in contravention of any requirement of this Act and, where the insurer is a company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm who is knowingly a party to the default, shall be punishable wtih fine which may extend to one thousand rupees and, in the case of a continuing default, with an additional fine which may extend to five hundred rupees for every day during which the default continues.

(*2*) Any provident society which makes default in complying with any of the requirements of Part III and any director, managing agent, manager, secretary or other officer of the society who is knowingly a party to the default, shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default with fine which may extend to two hundred and fifty rupees for every day during which the default continues.

Penalty for transacting insurance business in contravention of sections 3, 7, 97 and 98.

103. (*1*) Any insurer or any person acting on behalf of an insurer, who transacts any class of insurance business in contravention of any of the provisions of section 3, section 6, section 7, section 97 or section 98,

or does any one or more of the acts constituting the business of insurance [1][in relation to any insurance business transacted in contravention of any of the said sections] shall be punishable with fine which may extend to two thousand rupees.

(*2*) Any person knowingly taking out a policy of insurance with any insurer or person guilty of an offence under sub-section (*1*) shall be punishable with fine which may extend to five hundred rupees.

Provided that nothing in this section shall apply to the business of re-insurance between the head office of an insurer in British India and the head office of an insurer not having an office in British India.

Penalty for false statement in document.

104. Whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purpose of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

Wrongfully obtaining or withholding property.

105. Any director, managing agent, manager or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds

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[1] These words were substituted for the words "in relation to any such class of insurance business" by s. 31 of the Insurance (Amendment) Act, 1939 (11 of 1939).

it or wilfully applies it to purposes other than those expressed or authorised by this Act shall, on the complaint of the insurer or any member or any policy-holder thereof, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied and in default to suffer imprisonment for a period not exceeding two years.

Wrongfully diminishing life insurance fund.

106. If on the application of an insurer or any member of an insurance company or any policy-holder or the liquidator of an insurance company (in the event of the insurer being in liquidation) the Court is satisfied that by reason of any contravention of the provisions of this Act the amount of the life insurance fund has been diminished, every person who was at the time of the contravention a director, manager, liquidator or an officer of the insurer shall be deemed in respect of the contravention to have been guilty of misfeasance in relation to the insurer unless he proves that the contravention occurred without his consent or connivance and was not facilitated by any neglect or omission on his part; and the Court shall have all the powers which a Court has under sections 235 and 237 of the Indian Companies Act, 1913, and shall also have the power to assess the sum by which the amount of the life insurance fund has been diminished by reason of the misfeasance and to order any person guilty thereof to contribute to

that fund the whole or any part of that sum by way of compensation.

Previous sanction of Advocate-General for institution of Proceedings.

107. Except where proceedings are instituted by the Superintendent of Insurance, no proceedings under this Act against an insurer or any director, manager or other officer of an insurer or any person who is liable under sub-section (*2*) of section 41 shall be instituted by any person unless he has previous thereto obtained the sanction of the Advocate General of the province where the principal place of business in British India of such insurer is situate to the institution of such proceedings.

Power of Court to grant relief.

108. If in any proceedings, civil or criminal, it appears to the Court hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him either wholly or partly from his liability on such terms as it may think fit.

Cognizance of offences.

109. No Court inferior to that a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

Appeals.

110. (*1*) An appeal shall lie to the Court having jurisdiction from any of the following orders, namely:—

(*a*) an order under section 3 refusing to register, or cancelling the registration of, an insurer;

(*b*) an order under section 5 directing the insurer to change his name;

(*c*) an order under section 42 cancelling the licence issued to an agent;

(*d*) an order under section 75 refusing to register an amendment of rules;

(*e*) an order under section 87 directing an inquiry by an auditor or actuary; or

(*f*) an order made in the course of the winding up or insolvency of an insurer or a provident society.

(*2*) The Court having jurisdiction for the purposes of sub-section (*1*) shall be the principal Court of civil jurisdiction within whose local limits the principal place of business of the insurer concerned is situated.

(*3*) An appeal shall lie from any order made under sub-section (*1*) to the authority authorised to hear appeals from the decisions of the Court making the same and the decision on such appeal shall be final.

Service of notices.

111. (*1*) Any process or notice required to be served on an insurer or provident society shall be sufficiently served if addressed to any person registered with the Superintendent of Insurance as a person authorised to accept

notices on behalf of the insurer or provident society and left at, or sent by registered post to the address of such person as registered with the Superintendent of Insurance.

(2) Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed to be notice to the holder of such policy:

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer or to a provident society notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

112. Notwithstanding anything to the contrary contained in this Act an insurer carrying on the business of life insurance shall be at liberty to declare an *interim* bonus or bonuses to policy-holders whose policies mature for payment by reason of death or otherwise during the inter-valuation period on the recommendation of the investigating actuary made at the last preceding valuation.

Declaration of *interim* bonuses.

113. (1) Where a definite number of premiums is payable a policy of life insurance on which all premiums have been paid for three consecutive years shall acquire a guaranteed surrender value and notwithstanding

Acquisition of surrender values by policy.

any contract to the contrary shall not lapse by reason of non-payment of further premium but shall notwithstanding such non-payment be kept alive to the extent of its paid-up value.

Explanation.—For the purposes of this sub-section the paid-up value of a policy shall be an amount bearing to the total sum assured by the policy the same proportion as the total of the premiums already paid on the policy bears to the total of the premiums payable under the policy.

(*2*) A policy kept alive to the extent of its paid-up value under sub-section (*1*) shall not participate in any profits of the insurer earned after the conversion of the policy into a paid-up policy.

(*3*) This section shall not apply to—

(*a*) policies in respect of which the sum assured is payable only on the happening of a contingency which may not arise, or

(*b*) policies where the paid-up value will be less than one hundred rupees, or

(*c*) policies where the parties after the default has occurred in the payment of the premium agree in writing to some other arrangement, or

(*d*) policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non-payment of premium.

114. (1) The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Act.

Power of Central Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the qualifications to be possessed by actuaries;

(b) the manner in which it shall be determined for the purposes of this Act what is insurance business transacted in British India;

(c) the procedure to be followed by the Reserve Bank of India in dealing with deposits made in pursuance of this Act, including the receipt of, custody of, withdrawal of, and payment of interest on securities lodged as such deposits, and their inspection and verification by the Superintendent of Insurance;

(d) the form referred to in clause (d) of sub-section (2) of section 16;

(e) the manner in which the prospectuses and tables referred to in sub-section (1) of section 41 shall be published and the form in which they shall be drawn;

(f) the matters to be prescribed for the purposes of section 48;

(g) the manner in which licences to act as insurance agents may be issued or cancelled;

(*h*) the contingencies other than those specified in clauses (*a*) to (*f*) of section 65 on the happening of which money may be paid by provident societies;

(*i*) the matters other than those specified in clauses (*a*) to (*o*) of sub-section (*1*) of section 74 on which a provident society shall make rules;

(*j*) the form of any account, return or register required by Part III and the manner in which such account, return or register shall be verified;

(*k*) subject to the provisions of this Act, the fees payable thereunder and the manner in which they are to be collected; and

(*l*) the conditions and the matters which may be prescribed under sub-sections (5) [2][(6)], (*10*) and (*12*) of section 92;

Provided that every rule made under this section shall be laid as soon as may be after it is made before both Chambers of the Central Legislature for one month while they are in session; and, if within one month from the later date on which the rule has so been laid both Chambers agree in making any modification in the rule or both Chambers agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or shall be of no effect, as the case may be.

[2] These brackets and figures were inserted by s. 32 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(3) All rules made by a Local Government under the provisions of section 24 of the Provident Insurance Societies Act, 1912, and in force at the commencement of this Act shall so far as not inconsistent with the provisions of Part III continue in force and have effect as if duly made under this section until they are replaced by rules made under this section.

Alteration of forms.

115. The Central Government may, on the application or with the consent of an insurer, not being a company, alter the forms contained in the Schedules as respects that insurer, for the purpose of adapting them to the circumstances of that insurer:

Provided that nothing done under this section shall exempt the insurer from supplying all information required under this Act so far as it is possible for the insurer to do so.

Power to exempt from certain requirements.

116. The Central Government may, by notification in the official Gazette, exempt any insurer constituted, incorporated or domiciled in an Indian State from the provisions of [3][section 7 or section 98] relating to deposits or from the provisions of sub-section (2) of section 27 relating to the keeping of assets in India either absolutely or subject to such conditions or modifications as may be specified in the notification.

117. Nothing in this Act shall affect the liability

[3] These words and figures were substituted for the word and figure "section 6" by s. 33 of the Insurance (Amendment) Act, 1939 (11 of 1939).

of an insurer being a company to comply with the provisions of the Indian Companies Act, 1913, in matters not otherwise specifically provided for by this Act.

Saving of provisions of Indian Companies Act, 1913.

118. Nothing in this Act shall apply to any Trade Union registered under the Indian Trade Unions Act, 1926, or to any insurance business carried on by the Central or by Provincial Government, or to any provident fund to which the provisions of the Provident Funds Act, 1925, apply, or, if the Superintendent of Insurance so orders in any case, and to such extent as he specifies in such order, to—

Exemptions.

(*a*) any fund in existence and officially recognised by the Central Government before the 27th day of January, 1937, maintained by or on behalf of Government servants or Government pensioners for the mutual benefit of contributors to the fund and of their dependents, or

(*b*) any mutual or provident insurance society composed wholly of Government servants or of railway servants which has been exempted from any or all of the provisions of the Provident Insurance Societies Act, 1912.

119. Every insurer registered under this Act shall deposit and keep deposited with the Superintendent of Insurance copies of all standard forms of policy contracts issued by him in India.

Policy forms to be deposited with the Superintendent of Insurance.

120. The market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Act with the Reserve Bank of India shall be determined by the Reserve Bank of India whose decision shall be final.

Determination of market value of securities deposited under this Act.

121. To the *Exception* to section 130 of the Transfer of Property Act, 1882, the following words and figures shall be added, namely:—

Amendment of section 130, Act. IV of 1882.

"or affects the provisions of section 38 of the Insurance Act, 1938."

122. (*Amendment of Schedule I Act IX of* 1908). *Repealed by the Insurance* (*Amendment*) *Act* 1939 (*11 of 1939 section 34*.)

123. The Provident Insurance Societies Act, 1912, the Indian Life Assurance Companies Act, 1912, and the Indian Insurance Companies Act, 1928, are hereby repealed.

Repeals.

PART VII

ACCOUNTS, BALANCE-SHEET AND OTHER STATEMENTS

CHAPTER 37

REGULATIONS AND FORMS FOR THE PREPARATION OF BALANCE-SHEET*

PART I

Regulations

1. The balance-sheet required to be prepared in respect of every class of business carried on by an insurer is, in the form in which it is set out in Part II of this Schedule (Form A), appropriate to a case where the insurer maintains a separate fund in respect of life insurance business.

2. The balance-sheet of life insurance business shall be prepared as a separate document. The balance-sheet of any class of business may be prepared as a separate document instead of being incorporated by the addition of columns and headings in the general balance-sheet, but the totals of each such separate balance-sheet (showing the total assets of the class of business, the balance at the credit of the life insurance fund or other separate fund or account, the amount of shareholders' undivided profits, and outstanding liabilities) must in any case be incorporated in the general balance-sheet.

3. If any combined balance-sheet is for any purpose issued by an insurer, it shall be in accordance with the Form set out in this Schedule, and there shall not

* See section 11 of the Insurance Act. [First Schedule.]

be included among the assets shown in any such combined balance-sheet any amount in respect of any holding in or advance to any insurer whose assets and liabilities have been incorporated therein. Every combined balance-sheet must show clearly on the face thereof that it is a combined balance-sheet and must set out fully the name of every insurer whose assets and liabilities have been incorporated therein; if the assets and liabilities of any person not being an insurer are included in a combined balance-sheet the fact must be stated thereon.

4. Where any guarantee has been given by an insurer (otherwise than in the ordinary course of re-insurance business) in respect of the policies of any other insurer, the balance-sheet of the insurer by whom the guarantee was given must show clearly the name of every insurer whose policies have been so guaranteed and the extent of the guarantee:

Provided that this regulation shall not apply where a combined balance-sheet is issued incorporating the assets and liabilities of the insurer whose policies are guaranteed.

5. Where any part of the assets of an insurer is deposited in any place outside British India as security for the owners of policies issued in that place, the balance-sheet shall state that part of the assets has been so deposited, and, if any such part forms part of the life insurance fund, shall show the amount thereof and the place where it is deposited. Where any combined balance-sheet is issued by an insurer for any

purpose, the information required by this regulation shall be shown in the aggregate in respect of all the insurers whose assets and liabilities have been incorporated in the balance-sheet.

6. There shall be appended to the balance-sheet a statement in Form AA as set out in Part II of this Schedule showing the market value and the book value of the assets in India.

7. Every balance-sheet shall contain the following certificates, namely:—

(*a*) a certificate signed by the same persons as are required by this Act to sign the balance-sheet explaining how the values as shown in the balance-sheet of the Investments in Stocks and Shares have been arrived at and how the market value thereof has been ascertained for the purpose of comparison with the values so shown;

(*b*) a certificate signed by the same persons as are required by this Act to sign the balance-sheet and signed also, so far as respects the value of any items shown in the balance-sheet under the heading of "Reversions and Life Interests," by an actuary, certifying that the values of all the assets have been reviewed as at the date of the balance-sheet, and that in their belief the assets set forth in the balance-sheet are shown in the aggregate at amounts not exceeding their realisable or market value under the several headings—

"Loans," "Reversions and Life Interests," "Investments," "Agent's Balances," "Outstanding Premiums," "Interest, Dividends and Rents outstanding," "Interest, Dividends and Rents accruing but not due," "Amounts due from other Persons or Bodies carrying on Insurance Business," "Sundry Debtors," "Bills Receivable," "Cash" and the several items specified under "Other Accounts":

Provided that if the persons signing the certificate are unable to certify that the assets set forth in the balance-sheet are so shown as aforesaid, a full explanation of the bases upon which the values shown in the balance-sheet have been assessed shall be given in the certificate;

(c) a certificate signed by the same persons as are required by this Act to sign the balance-sheet and by the auditor certifying that no parts of the assets of the life insurance fund has been directly or indirectly applied in contravention of the provisions of this Act relating to the application and investment of life insurance funds; and

(*d*) certificates signed by the auditor (which shall be in addition to any other certificate or report which he is required by law to give with respect to the balance-sheet) certifying—

(i) that he has verified the cash balances and the securities relating to the insurer's loans, reversions and life interests, and investments;

(*ii*) to what extent, if any, he has verified the investments and transactions relating to any trusts undertaken by the insurer as trustee; and

(*iii*) in the case of a combined balance-sheet that he has audited the balance-sheet, and accounts of every insurer whose assets and liabilities are incorporated therein, or that any such balance- sheet and accounts which have not been audited by him have been certified by independent auditors. The said certificate shall contain a reference to such reservations, if any, as may have been made by any auditor upon any report or certificate given by him with respect to the balance-sheet and accounts of any insurer whose assets and liabilities are incorporated in the combined balance-sheet.

8. If the values shown in the balance-sheet in respect of "Holdings in Subsidiary Companies" or "House property (*i*) in India, (*ii*) out of India" have been increased since the last previous balance-sheet, the certificate required by paragraph (*b*) of the last foregoing regulation shall state the amount of every increase not solely due to the cost of subsequent additions or, as respects holdings in controlled companies,

to increased profits, and shall contain an explanation of the reason therefor.

9. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely:—

(*a*) "combined balance-sheet" includes any combined statement made by an insurer of assets and liabilities in the form of a balance-sheet which includes the assets and liabilities of any other insurer; and

(*b*) "market value" means as respects any assets the market value thereof as ascertained from published market quotations, or, if there be no such value, its fair value as between a willing buyer and a willing seller.

PART II
FORMS
FORM A.
Form of Balance-Sheet.

Balance-Sheet of 19 .

—	Life and Annuity Business (1)	Other Classes of Business (2)*	Total	—	Life and Annuity Business (1)	Other Classes of Business (2)*	Total
	Rs. a. p.	Rs. a. p.	Rs. a. p.	Loans:—	Rs. a. p.	Rs. a. p.	Rs. a. p.
Shareholders' capital (each class to be stated separately) ...				On Mortgages of Property within British India			
				On Mortgages of property outside British India ...			
Authorised: ......Shares of Rs......each Rs.				On Security of municipal and other public rates ...			
				On Stocks and Shares ...			
Subscribed: ......Shares of Rs.......each Rs.				On Insurer's policies within their surrender value			
				On Personal security ...			
Called-up: ......Shares of Rs.......each Rs.				To Subsidiary Companies (other than Reversionary. (*f*) ...			
Less Unpaid calls Rs.				Reversions and Life interests purchased			
Reserve or Contingency Accounts (*d*):				Loans on Reversions and Life Interests			
Investment Reserve Account				Debentures and Debenture stocks of Subsidiary Reversionary Companies (*f*) Carried over			
Profit and Loss Appropriation Account Balance.							

FORM A—*contd.*

—	Life and Annuity Business (1)	Other Classes of Business (2)*	Total	—	Life and Annuity Business (1)	Other Classes of Business (2)*	Total
	Rs. a. p.	Rs. a. p.	Rs. a. p.	Brought forward	Rs a p	Rs. a. p	Rs. a. p.
Balances of Funds and Accounts:				Ordinary Stocks and Shares of Subsidiary Reversionary Companies (*f*)			
Life Insurance Fund ...				Loans to subsidiary Reversionary Companies (*f*) ...			
Fire Insurance Business Account				Investments:			
Marine Insurance Business Account				Deposit with the Reserve Bank of India (Securities to be specified			
Accident and Miscellaneous Insurance Business Account				Indian Government Securities			
Other accounts, if any, (to be specified) (*l*)				Provincial Government Securities			
Pension or Superannuation Accounts (*b*)				British, British Colonial and British Dominion Government Securities			
Debenture Stock per cent ...				Foreign Government Securities			
Loans and Advances (*e*) ...				Indian Municipal Securities ...			
Bills Payable (*c*)				British and Colonial Securities			
Estimated Liability in respect of outstanding claims, whether due or intimated (*d*)				Foreign Securities			
Annuities due and unpaid (*d*) ...				Bonds, Debentures, Stocks and other securities where Interest is guaranteed by the Indian Government or a Provincial Government.			
Outstanding Dividends ...							

Amounts due to Other Persons or Bodies carrying on Insurance Business ( )				Bonds, Debentures. Stocks and other Securities whereon Interest is guaranteed by the British or any Colonial Government			
Sundry Creditors (including outstanding and accruing expenses and Taxes) (c)				Bonds, Debentures, Stocks and other Securities whereon Interest is guaranteed by any Foreign Government ...			
Other sums owning by the insurer (particulars to be given) (c) ...				Debentures of any railway In India			
Contingent Liabilities (to be specified) (e)				Debentures of any railway out of India			
Rs.—				Preference or guaranteed Shares of any railway in India ...			
				Preference or guaranteed Shares of any railway out of India			
				Railway Ordinary Stocks (i) In India, (ii) out of India ...			
				Other Debentures and Debenture Stock of Companies incorporated (i) in India (ii) out of India			
				Other guaranteed and preference Stocks and Shares of Companies incorporated (i) in India (ii) out of India			
				Other Ordinary Stocks and Shares of Companies incorporated (i) in India, (ii) out of India			
				Holdings in Subsidiary Companies (f) House property (i) in India, (ii) out of India ...			
				Carried over			

FORM A—(*contd.*)

—	Life and Annuity Business (1)	Other Classes of Business (2)*	Total	—	Life and Annuity Business (1)	Other Classes of Business (2)*	Total
	Rs. a. p.	Rs. a. p.	Rs. a, p.		Rs. a. p.	Rs. a. p.	Rs. a. p.
				Brought forward			
				Freehold and Leasehold ground rents and rent eharges ...			
				Agent's Balances			
				Outstanding Premiums (*g*) ...			
				Interest, Dividends and Rents outstanding (*d*)			
				Interest, Dividends and Rents accruing but not due (*d*) ...			
				Amounts due from other Persons or Bodies carrying on Insurance Business (*h*)			
				Sundry Debtors (*i*) ...			
				Bills Receivable			
				Cash :			
				At Bankers on Deposit Account			
				At Bankers on Current Account and in hand			
				At Call and Short Notice (*j*) ...			
				Other Accounts (to be specified) (*k*)			
				Carried over ...			

* Assets and Liabilities, Shareholders' Capital and Reserves, not allocated to any class of business specified in column (*1*) must be shown in column (2).

Notes

(*a*) The Reserves or Contingency Accounts must be separately stated.

(*b*) If the insurer has not full and unrestricted control of the assets constituting the Pension or Snperannuation Accounts, either those Accounts and the assets and liabilities relating thereto must be omitted trom the balance-sheet or the assets of which the insurer has not such control must be clearly indicated on the face of the balance sheet.

(*c*) If the insurer has deposited security as cover in respect of any of these items, the amount and nature of the securities so deposited must be clearly indicated on the face of the balance-sheet.

(*d*) These items are or have been included in the corresponding items in the Revenue or Profit and Loss Accounts, Outstanding and accruing interest, dividends and rents must be shown after deduction of income-tax or the income-tax must be provided for amongst the liabilities on the other side of the balance-sheet.

(*e*) Such items as amount of liability in respect of bills discounted, uncalled capital of subsidiary companies uncalled capital of other Investments, etc.. must either be shown in their several categories under the heading "Contingent Liabilities" or the appropriate items on the assets side must be set out in such detail as will clearly indicate the amount of the uncalled capital.

(*f*) As respects life and annuity business full particulars of holdings in and loans to subsidiary companies must be stated, giving the name of each company, the number and description of each class of shares held, the amounts paid up thereon, and the value at which the holdings in each company stand in the balance-sheet.

(*g*) Either this item must be shown net or the commission must be provided for amongst the liabilities on the other side of the balance-sheet.

(*h*) The aggregate amount owning by a subsidiary company or subsidiary companies to be shown separately from all other assets and the aggregate amount owing to a subsidiary company or subsdiary companies is to be shown separately from all other liabilities.

(*i*) Amounts due from directors and officers must be shown separately.

(*j*) No amounts must be entered under this heading unless fully secured. If not fully secured, the amounts must be included under the heading "Sundry Debtors".

(*k*) Under this heading must be included such items as the following, which must be shown under separate heading suitably described : office furniture, goodwill, preliminary, formation and organisation expenses, development expenditure account, discount on debentures issued, other expenditure carried forward to be written off in future years, balance being loss on Profit and Loss Appropriation Accounts, etc. The amounts included in the balance-sheet must not be in excess of cost.

(*l*) Under the head "Other accounts, if any (to be specified)" on the left-hand side, fines realised from the staff and their contribution towards the provident fund, if any, should be shown under separate sub-heads.

FORM AA.

Classified Summary of the [1][Assets in India] of the...

Company on 19 .

Class of Asset,	Book value as per (*a*) below.	Market value as per (*b*) below.	Remarks as per (*c*) below
(1) Government of India Securities			
(2) Indian Provincial Government Securities.			
(3) India Municipal Port and Improvement Trust Securities including Debentures.			
(4) Debentures of Indian Railways			
(5) Guaranteed and Preference Shares of Indian Railways.			
(6) Annuities of Indian Railways...			
(7) Ordinary Shares of Railways in India.			
(8) Other Debentures of concerns in India.			
(9) Other Guaranteed and Preference Shares of concerns in India.			
(10) Other Ordinary Shares of concerns in India			
(11) Loans on the Company's policies effected in India and within their surrender value.			
(12) Loans on Mortgage of property in India.			
(13) Loans on Personal Security to persons domiciled and resident in India.			

[1]These words were substituted for the words "Indian Assets by s. 35 of the Insurance (Amendment) Act, 1939 (11 of 1939).

FORM AA–(*contd.*)

Class of Asset.	Book value as per (*a*) below.	Market value as per (*b*) below.	Remarks as per (*c*) below.
	Rs.	Rs.	
(14) Other loans granted in India (particulars to be stated).			
(15) Land and House property in India.			
(16) Cash on Deposit in banks in India.			
(17) Cash in Hand and on current accounts in banks in India.			
(18) Agent' balances and outstanding premiums.			
(19) Interest, dividends and rents either outstanding or accrued but not due.			
(20) Other assets in India (to be specified).			

The statement shall show—

(*a*) the value for which credit is taken in the balance-sheet for each of the above-mentioned classes of assets,

(*b*) the market value of such of the above-mentioned classes of assets as has been ascertained from published quotations after deduction of accrued interest included in market prices in those cases where accrued interest is inclined elsewhere in the balance-sheet,

(*c*) how the value of such of the above-mentioned classes of assets as has not been

ascertained from published quotation has been arrived at, and

(*d*) the rates of exchange at which the values of the assets other than in rupee currency have been converted into rupees.

The market values need not be shown separately where they are not less than the book values and a certificate to that effect is appended to the statement.

No amounts on account of any of the following items may be entered in the statement:—

Goodwill.

Preliminary, formation, organisation or development expenses.

Commission or discount on shares or debentures issued.

Commuted Commission.

Expenditure carried forward to be written off in future years.

CHAPTER 38

REGULATIONS AND FORMS FOR THE PREPARATION OF PROFIT AND LOSS ACCOUNTS*

PART I

Regulations

1. The items on the income side of the Profit and Loss Account and Profit and Loss Appropriation Account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not.

2. Deductions from Interest, Dividends and Rents to be shown in respect of income-tax must include all amounts in respect of British Indian income-tax whether or not it has been or is to be deducted at source or paid direct.

3. The Interest, Dividends and Rents, *less* income-tax thereon shown in the Revenue Accounts for any classes of business other than life insurance business, including annuity business may, if the insurer so desires, be included with the corresponding items in the Profit and Loss Account.

* See section 11 of the Insurance Act. [Second Schedule.]

PART II

FORMS

FORM B.

Form of Profit and Loss Account.

Profit and Loss Account of for the year ended 19 .

	Rs. a. p		Rs. a. p.
British Indian Taxes on the Insurer's Profits (not applicable to any particular Fund or Account)		Interest, Dividends and Rents (not applicable to any particular Fund or Account) Rs.	
		Less—Income-Tax thereon Rs.	
Expenses of Management (not applicable to any particular Fund or Account)*		Profit on realisation of Investments (not credited to Reserves or any particular Fund or Account)	
Loss on Realisation of Investments (not charged to Reserves or any particular Fund or Account).		Appreciation of Investments (not credited to Reserves or any particular Fund or Accounts)	
Depreciation of Investments (not charged to Reserves or any particular Fund or Account)		Profit transferred from Revenue Accounts (details to be given)	
oss transferred from Revenue Accounts (details to be given) ...		Transfer Fees... ...	
Other Expenditure (to be specified)		Other Income (to be specified)	
Balance for the year carried to Appropriation Account.		Balance being loss for the year carried to Appropriation Account	

*If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount must be shown separately.

FORM C

Form of Profit and Loss Appropriation Account.

Profit and Loss Appropriation Account of for the year ended 19 .

	Rs. a. p.		Rs. a. p.
Balance being loss brought forward from last year ...		Balance brought forward from last year ... Rs.	
Balance being loss for the year brought from Profit and Loss Account (as in Form B)		Less—Dividends since paid in respect of last year (to be specified and if "free of tax" to be so stated)* ... Rs.	
Dividends paid during the year on account of the current year (to be specified and if "free of tax" to be so stated) ...			
Transfers to any particular Funds or Accounts details to be given) ...		Balance for the year brought from Profit and Loss Account (as in form B) ...	
Balance at end of the year as shown in the Balance-Sheet		Balance being loss at end of the year as shown in the Balance-Sheet ...	

*Note.—This item may be shown on the other side of the account if preferred.

CHAPTER 39

REGULATIONS AND FORMS FOR THE PREPARATION OF REVENUE ACCOUNTS*

PART I

Regulations

1. Form D is, as set out in Part II of this Schedule, appropriate for life insurance business, but a separate revenue account must be prepared for every class of business in respect of which the insurer is required to maintain a separate account.

2. Form F is, as set out in Part II of this Schedule, appropriate for fire insurance business. A separate revenue account in the same form must be prepared for accident and miscellaneous insurance including workmen's compensation and motor car insurance. Form E is, as set out in Part II of this Schedule, appropriate for marine insurance business.

3. If any combined revenue account is for any purpose issued by an insurer it must be in accordance with the forms specified in this Schedule and must clearly show on the face thereof that it is a combined revenue account, and must set out fully the name of every insurer required to make separate returns under this Act whose revenue and expenditure have been

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* See section 11 of the Insurance Act. [Third Schedule.]

included therein; if the revenue and expenditure of any person not being an insurer are included in a combined revenue account, the fact must be stated therein.

4. The items on the income side of the revenue account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not.

5. Re-insurance premiums, whether on business ceded or accepted, are to be brought into account gross (*i.e.*, before deducting commissions) under the head of premiums.

6. As respects life insurance business the following statements shall be furnished to the Superintendent of Insurance every year showing details provided for in a Form pertaining thereto:—

(A) A statement in form DD as set forth in Part II of this Schedule.

(B) A statement in form DDD as set forth in Part II of this Schedule.

(C) A statement in form DDDD as set forth in Part II of this Schedule.

7. The following information shall be supplied in addition to the revenue account, namely, the gross premium written in India for life, fire, marine and accident and miscellaneous insurance business.

8. Any office premises which form part of the assets of a life insurance fund must be treated as an interest earning investment, and accordingly, in the revenue account for life insurance business a fair rent

for the premises must be included under the heading "Interest, Dividends and Rents" and in the revenue account for every class of business for which the premises are used proper charges for the use thereof must be included under the heading "Expenses of Management."

9. Where an insurer carries on business of life insurance in conjunction with any other class of insurance business the expenses of management charged to the life insurance revenue account must not include more than a reasonable proportion of the common expenses and in particular, no such account must be charged with more than a fair sum for the use of any office premises having regard to the income from the various classes of business carried on and to the extent to which the premises are used for the purposes of each class of business.

10. Deductions from Interest, Dividends and Rents in respect of income-tax must include all income-tax charged on such income whether or not it has been or is to be deducted at source or paid direct; the income-tax to be shown as so deducted in the life insurance Revenue Account is British Indian, United Kingdom, Foreign and Dominion income-tax, but the income-tax to be shown as deducted in Revenue Accounts of any other classes of business is British Indian income-tax only.

PART II.

FORMS.

FORM D.

Form of Revenue Account applicable to Life Insurance Business.

Revenue Account of for the year ended 19

in respect of Business.

—	Business within India	Business out of India. (a)	Total.	—	Business within India.	Business out of India. (a)	Total.
	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.
Claims under Policies (including provision for claims due or intimated), less Re-insurances— By death ... By maturity ...				Balance of Fund at the beginning of the year ..			
Annuities, less Re-insurances ...				Premiums, less Re-insurances— (i) First year premiums ... (ii) Renewal premiums ... (iii) Single premiums ...			
Surrenders (including Surrenders of Bonus), less Re-insurances ..				Consideration for Annuities granted, less Re-insurances (c) ...			
Bonuses in cash, less Re-insurances ... Bonuses in Reduction of Premiums, less Re-insurances.				Interest, dividends and Rents ...	Rs.		
[1][Commission to insurance agents (less that on Re-insurances)] ...				Less—Income-tax thereon (d)	Rs.		
				Registration Fees			
				Other Income (to be specified) (e)			
Expenses of Management [1](b)—[1. Allowances and Commission (other than commission to insurance agents)].				Loss transferred to Profit and Loss Account...			
2. Salaries, etc. (other than to agents and those con-				Transferred from Appropriation Account.			

This entry was substituted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939)

FORM D—(*contd.*)

—	Business within India,	Business out of India.	Total.	—	Business within India.	Business out of India.	Total.
	Rs.	Rs.	Rs.		Rs.	Rs.	Rs
tained in item No. 1).							
3. Travelling expenses ...							
4. Directors' fees							
5. Auditors' fees							
6. Law charges							
7. Advertisements...							
8. Printing and Stationery ...							
9. Other expenses ot management (accounts to be specified)							
10. Other payments (accounts to be specified) ...							
11. Rents for offices belonging to and occupied by the insurer ...							
12. Rent of other offices occupied by the insurer ...							
Bad Debts ...							
United Kingdom, British Indian, Dominion and Foreign Taxes...							
Other Expenditure (to be specified) ...							
Profit transferred to Profit and Loss Account ...							
Balance of Fund at the end of the year as shown in the Balance-sheet ...							

Notes.

(*a*) In the case of an insurer having his head office in British India, these columns apply only to business the premiums in respect of which are payable outside India.

(*b*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately. Under this item the salary paid to the managing agent or managing director shall be shown separately from the total amount paid as salaries to the remaining staff.

(*c*) All single premiums for annuities, whether immediate or deferred, must be included under this heading.

(*d*) British Indian, United Kingdom, Foreign and Dominion income-tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recovered from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for United Kingdom, British Indian, Foreign and Dominion taxes, other than those shown under this item.

(*e*) Under the head "Other Income" fines, if any, realised from the staff must be shown separately. All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside[1]* India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account

(*f*) In the case of an insurer having his principal place of business outside British India the expenses of management for business out of India and total business need not be split up into the several sub-heads, if they are not so split up in his own country.

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[1] The word "British" was omitted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

FORM DD.

Classified statement of life insurance policies of the ______ *Company, for the year ending* ______ 19 .

—	New life insurance business in respect of which a premium has been paid in the year.				Total life insurance business in force at end of the year.		Premium income for which credit has been taken in the revenue account.
	Number of policies	Sum insured and annuities per annum.	Single premiums (including consideration for immediate [1][or deferred] annuities and all other Premiums paid at the outset where no subsequent premium is payable).	Yearly renewal premium income.	Number of policies.	Sums insured with bonuses and annuities per annum.	
	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.
Ordinary policies							
In India							
Out of India							
Total ...							
Annuity contracts, etc.							
In India							
Out of India							
Total ...							
Group insurance policies							
In India							
Out of India							
Total ...							

The amounts should be stated to the nearest rupees and after deduction of re-insurances.

[1] These words were inserted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

FORM DDD.

Additions to and deductions from policies of the

Company for the year ending 19

	Ordinary life insurance policies insuring money to be paid on death or survivance.			Annuities	
	No.	Sum assured.	Reversionary bonus additions.	No.	Annuity per annum.
		Rs.	Rs.		Rs.
(1) Policies at beginning of year ...					
(2) New policies issued ...					
(3) Old policies revived ...					
(4) Old policies changed and increased					
(5) Bonus additions allotted ...					
Total ...					
Discontinued during year—					
(6) By death					
(7) By survivance or the happening of the contingencies insured against other than death.					
(8) By expiry of term under temporary insurances ...					
(9) By surrender of policy ...					
(10) By surrender of bonus.					
(11) By forfeiture or lapse ...					
(12) By change and decrease					
(13) By being not taken up					
Total discontinued ...					
Total existing at end of year .					

[1] [A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted.

Insurers having their principal place of business in British India shall give the information required in the form separately for business transacted in India and business transacted outside India and insurers having their principal place of business outside British India will furnish information regarding business transacted in India only.]

[1] These notes were added by s. 36 of the Insurance (Amendment) Act 1939 (11 of 1939).

FORM DDDD.

Particulars of the policies forfeited or lapsed in the [1]year under review, less those [2][revived and reinstated for full benefits, classified according to the year in which they were issued.

1 * year in which the policies were issued.	Number of policies forfeited or lapsed.	Sum insured under policies forfeited or lapsed.
Year ending 19 , being the year under review Year ending 19 , being the year previous to that under review		

And so on, the number of and sum insured under policies forfeited or lapsed in last 1*year under review being stated after classification according to each of the preceeding years in which they were issued.

A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted.

Insurers having their principal place of business in British India shall give the information required in the form separately for business transacted in India and business transacted outside India and insurers having their principal place of business outside British India will furnish information regarding business transacted in India only.

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[1] The word "financial" was omitted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[2] This word was substituted for the word "revised," *ibid.*

Form E.

Form of Revenue Account applicable to Marine Insurance Business.

Revenue Account of for the year ended 19 ,
in respect of Marine Insurance Business

—	Current year.	Last preceding year.	Previous years.	Total.		Current year.	Last preceding year.	Previous years.	Total.
	Rs.	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	Rs.
*Claims paid (less Salvages and Re-insurances) (*a*) (*c*)					Balance of Marine Insurance Business Account at beginning of the year ...				
*Commission ...					Balances ...				
*Expenses of Management (*b*)					Additional Reserve (if any) ...				
*Bad Debts ...					*Premiums (less Returns, Re-insurances, Brokerages and Discount) (*c*) ...				
United Kingdom, British Indian, Dominion and Foreign Taxes					Interest, Dividends and Rents, Rs.				
					Less—Income-tax thereon. Rs.				
*Other Expenditure (to be specified) ...					*Other Income (to be specified) (*d*)				
Profit transferred to Profit and Loss Account ...									

FORM E.—(*contd.*)

—	Current year	Last preceding year.	Previous years.	Total.	—	Current year.	Last preceding year.	Previous years.	Total.
	Rs,	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.	Rs.
Balance of Marine Insurance Business Account at end of year as shown in the Balance-sheet :					Loss transferred to Profit and Loss Account ...				
Balances ...									
Additional Reserve (if any)					Transferred from Appropriation. Account.				

Notes.

(*a*) This heading must include all expenses directly incurred in settling claims.

(*b*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately.

(*c*) Where the account is furnished under the provisions of section 11 of the Insurance Act, 1938, separate figures for claims paid to claimants in [1]* India and claimants outside [1]* India, and for premiums derived from business effected in [1]* India and effected outside [1]* India must be given.

(*d*) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside [1]* India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

* Where the account is furnished under the provisions of clause (*b*) of sub-section (2) of section 16 of the In·urance Act, 1938, by an insurer to whom that section applies, separate figures for business within [1]* India and business out of [1]* India must be given against the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.

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[1] The word "British" was omitted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939)

FORM F.

Form of Revenue Account applicable to Fire Insurance Business and to Accident and Miscellaneous Insurance Business including Workmen's Compensation and Motor Car Insurance Business.

Revenue Account of for the year ended 19 , in respect of Business.

	Rs.		Rs,
*Claims under Policies, less Re-insurances (a) (d):		Balance of Account at beginning of the year:	
Paid during the year ... Rs.		Reserve for Unexpired Risks ... ... Rs.	
Total estimated liability in respect of outstanding claims at end of the year whether due or intimated ... Rs.		Additional Reserve (if any) ... ... Rs.	
Total...		*Premiums, less Re-insurances (d)	
Less—Outstanding at end of previous year (b) ... Rs.		Interest, Dividends and Rents ... ... Rs.	
*Commission		Less—Income-tax thereon ... ... Rs.	
*Expenses of Management (c) ...		*Other Income (to be specified) (e)	
*Bad Debts		Loss transferred to Profit and Loss Account	
United Kingdom, Foreign and Dominion Taxes		Transferred from Appropriation Account	
*Other Expenditure (to be specified)...			
Profit transferred to Profit and Loss Account			
Balance of Account at the end of the year as shown in the Balance-Sheet:			
Reserve for Unexpired Risks, being per cent, of premium income of year ... ... Rs.			
Additional Reserve (if any) Rs.			
Rs.		Rs.	

Notes.

(*a*) This heading must include all expenses directly incurred in settling claims.

(*b*) If in any year the claims actually paid and those still unpaid at the end of that year in respect of the previous year or years are in excess of the amount included in the previous year's Revenue Account as provision for outstanding claims, then the amount of such excess must be shown in the Revenue Account.

(*c*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately.

(*d*) Where the account is furnished under the provisions of section 11 of the Insurance Act, 1938, separate figures for claims paid to claimants in [1]* India and claimants outside [1]* India, and for premiums derived from business effected outside [1]* India must be given.

(*e*) All the amounts received by the insurer directly or indirecty whether from his head office or from any other source outside[1]* India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

* Where the account is furnished under the provisions of clause (*b*) of sub-section (2) of section 16 of the Insurance Act, 1938, by an insurer to whom that section applies, separate figures for business within [1]* India and business out of [1]*India must be given against the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.

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[1] The word "British" was omitted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

CHAPTER 40

REGULATIONS FOR THE PREPARATION OF ABSTRACTS OF ACTUARIES' REPORTS AND REQUIREMENTS APPLICABLE TO SUCH ABSTRACTS*

PART I

Regulations.

1. Abstracts and Statements must be so arranged that the numbers and letters of the paragraphs correspond with those of the paragraphs of Part II of this Schedule.

2. In showing the proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums, in accordance with the requirements of [2][paragraph 4] of Part II of this Schedule, no credit is to be taken for any adjustments made in order to secure that no policy is treated as an asset.

3. (*1*) The average rate of interest yielded in any year by the assets constituting a life insurance fund shall, for the purposes of [3][paragraph 5] of Part II of this Schedule, be calculated by dividing the interest of the year by the mean fund of the year; and for the

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* See Indian Insurance Act, sec. 13. [Fourth Schedule.]

[1] The word "British" was omitted by s. 36 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[2] This word and figure were substituted for the word and figure "paragraph 3" by s. 37, *ibid.*

[3] This word and figure were substituted for the word and figure "paragraph 4," *ibid.*

purposes of any such calculation the interest of the year shall be taken to be the whole of the interest credited to the life insurance fund during the year after deduction of income-tax charged thereon (any refund of income-tax in respect of expenses of management made during the year being taken into account), and the mean fund of the year shall be ascertained by adding a sum equal to one-half of the amount of the life insurance fund at the beginning of the year to a sum equal to one-half of that fund at the end of the year, and deductions from the aggregate of those two sums an amount equal to one-half of the interest of the year.

(2) For the purposes of the calculation aforesaid either—

(*a*) all profits and income arising during the year from sums invested in reversions shall be included in the interest credited to the life insurance fund during the year; or

(*b*) such portion of the life insurance fund as is invested in the purchase of reversions, and the profits and income arising therefrom, shall be excluded from the calculation; but in that case a statement must be added to the information required under the said [4][paragraph 5], showing in respect of the portion of the fund so excluded as aforesaid, the average rate of annual profit and

[4] This word and figure were substituted for the word and figure "paragraph 4" by s. 37 of the Insurance (Amendment) Act, 1939 (11 of 1939).

income for which credit has been taken during the five years last preceding the valuation date, and explaining the manner in which the said average rate has been calculated.

(3) The information given in accordance with the requirements of the said [5][paragraph 5] shall show clearly by which of the methods hereinbefore in this regulation mentioned the sums invested in reversions and the profits and income arising therefrom have been dealt with.

4. Every abstract prepared in accordance with the requirements of Part II of this Schedule shall be signed by an actuary and shall contain a certificate by him to the effect that he has satisfied himself as to the accuracy of the valuations made for the purposes thereof and of the valuation data:

Provided that in the case of an abstract prepared on behalf of [6][an insurer], if the actuary who signs the abstract is not a permanent officer of [7][the insurer] the certificate as to the accuracy of the valuation data shall be given and signed by the principal officer of [7][the insurer] and the actuary shall include in the abstract a statement signed by him showing what pre-

[5] This word and figure were substituted for the word and figure "paragraph 4" by s. 37 of the Insurance (Amendment) Act, 1939 (11 of 1939).

[6] These words were substituted for the words "an insurance company," *ibid.*

[7] These words were substituted for the words "the company," *ibid.*

cautions he has taken to ensure the accuracy of the data.

5. For the purposes of the Schedule the following expressions have the meaning hereby respectively assigned to them, namely:—

"extra premium" means a charge for any risk not provided for in the minimum contract premium;

"inter-valuation period" means, as respects any valuation, the period to the valuation date of that valuation from the valuation date of the last preceding valuation in connection with which an abstract was prepared under this Act or under the enactments repealed by this Act, or, in a case where no such valuation has been made in respect of the class of business in question, from the date on which the insurer began to carry on that class of business;

"maturity date" means the fixed date on which any benefit will become payable either absolutely or contingently;

"net premiums" means as respects any valuation the premiums taken credit for in the valuation;

"premium term" means the period during which premiums are payable;

"valuation date" means as respects any valuation the date as at which the valuation is made.

PART II

Requirements Applicable to an Abstract in respect of Life Insurance Business.

The following tabular statements shall be annexed to every abstract prepared in accordance with the requirements of this Part of this Schedule, namely:—

(*a*) a Consolidated Revenue Account, in the Form G annexed to this Part of this Schedule, for the inter-valuation period (except that it shall not be necessary to prepare such an account in respect of any class of business so long as the insurer deposits annually with the Superintendent of Insurance an abstract in respect of that class of business); and

(*b*) a Summary and Valuation in the Form H annexed to this Part of this Schedule of the policies included at the valuation date in the class of business to which the abstract relates; and

(*c*) a Valuation Balance-Sheet in the Form I annexed to this Part of this Schedule; and

(*d*) a statement in Form DDD as set forth in Part II of the Third Schedule of the additions to and deductions from the number of policies and the sums insured thereunder for each class of life insurance; and

(*e*) a statement in Form DDDD as set forth in Part II of the Third Schedule of parti-

culars of policies forfeited or lapsed under each class of life insurance;

and every such abstract shall show—

1. The valuation date.

2. The general principles and full details of the methods adopted in the valuation of each of the various classes of insurances and annuities shown in the said Form H, including statements on the following points:—

(*a*) whether the principles were determined by the instruments constituting the company or by its regulations or bye-laws or how otherwise;

(*b*) the method by which the net premiums have been arrived at and how the ages at entry, premium terms and maturity dates have been treated for the purpose of the valuation;

(*c*) the method by which the valuation age, period from the valuation date to the maturity date, and the future premium terms, have been treated for the purpose of the valuation;

(*d*) the rate of bonus taken into account where by the method of valuation definite provision is made for the maintenance of a specific rate of bonus;

(*e*) the method of allowing for—

(*i*) the incidence of the premium income; and

(*ii*) premiums payable otherwise than annually;

(*f*) the methods by which provision has been made for the following matters, namely:—

(*i*) the immediate payment of claims;

(*ii*) future expenses and profits in the case of limited payment and paid-up policies;

(*iii*) the reserve in respect of lapsed policies, not included in the valuation, but under which a liability exists or may arise; and whether any reserves have been made for the matters aforesaid;

(*g*) whether under the valuation method adopted any policy would be treated as an asset, and, if so, what steps, if any, have been taken to eliminate such asset;

(*h*) a statement of the manner in which policies on under-average lives and policies subject to premiums which include a charge for climatic, military or other extra risks have been dealt with; and

(*i*) the rates of exchange at which liabilities in respect of policies issued in foreign currencies have been converted into rupees and what provision has been made for possible increase of liability arising from future variations in the rates of exchange.

3. The table of mortality used, and the rate of interest assumed, in the valuation.

4. The proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums,

separately specified in respect of insurances with immediate profits, with deferred profits, with profits under discounted bonus systems, and without profits.

5. The average rates of interest yielded by the assets, whether invested or univested, constituting the life insurance fund for each of the years covered by the valuation date.

6. The basis adopted in the distribution of profits as between the insurer and policy-holders, and whether such basis was determined by the instruments constituting the company, or by its regulations or bye-laws, or how otherwise.

7. The general principles adopted in the distribution of profits among policy-holders, including statements on the following points, namely:—

(*a*) whether the principles were determined by the instruments constituting the company, or by its regulations or bye-laws, or how otherwise;

(*b*) the number of years' premiums to be paid, period to elapse and other conditions to be fulfilled before a bonus is allotted;

(*c*) whether the bonus is allotted in respect of each year's premium paid, or in respect of each completed calendar year or year of assurance or how otherwise; and

(*d*) whether the bonus vests immediately on allocation, or, if not, the conditions of vesting.

8. (*1*) The total amount of profits arising during the inter-valuation period, including profits paid away and sums transferred to reserve funds or other accounts during that period, and the amount brought forward from the preceding valuation (to be stated separately) and the allocation of such profits—

(*a*) to interim bonus paid;

(*b*) among policy-holders with immediate participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses);

(*c*) among policy-holders with deferred participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses);

(*d*) among policy-holders in the discounted bonus class, giving the number of the policies which participated and the sums assured therunder (excluding bonuses);

(*e*) to the insurer or, in the case of an insurance company, among shareholders or to shareholders' accounts (any such sums passed through the accounts during the inter-valuation period to be separately stated);

(*f*) to every reserve fund or other fund or account (any such sums passed through the accounts during the inter-valuation period to be separately stated);

(*g*) as carried forward unappropriated.

(2) Specimens of bonuses allotted as at the valuation date to policies for one thousand rupees—

(*a*) for the whole term of life effected at the respective ages of 20, 30 and 40, and having been in force respectively for five years, ten years and upwards at intervals of ten years; and

(*b*) for endowment insurances effected at the respective ages of 20, 30 and 40, for endowment terms of fifteen, twenty and thirty years, and having been in force respectively for five years, ten years and upwards at intervals of ten years;

together with the amounts apportioned under the various manners in which the bonus is receivable.

9. A statement in Form J annexed to this Part of this Schedule of specimen policy reserve values held or required to be held according to the methods adopted in the valuation, and specimen minimum surrender values in respect of whole life insurance policies for Rs. 1,000 with premiums payable throughout life effected at the respective ages of 20, 30, 40 and 50, and immediately on payment of the first, second, third, fourth, sixth, seventh, eighth, ninth, tenth, fifteenth and twentieth annual premium; with similar specimen policy reserve values and specimen surrender values in respect of whole life insurance policies subject to premiums payable for 20 years and of endowment insurance policies maturing at age 55.

10. A statement showing how the liability under any disability clause in a policy has been determined in the valuation with full information of the tables of sickness or accident used for the purpose.

FORM G.

Consolidated Revenue Account of for years commencing and ending

	Business within India	Total.		Business within India	Total.
	Rs.	Rs.		Rs.	Rs.
Claims under Policies (including provision for claims due or intimated), less Re-insurances—			Balance of Life Insurance Fund at the beginning of the period ...		
By death			Premiums, less Re-insurances		
By maturity			Consideration for Annuities Granted, less, Re-insurances (*b*) ...		
Annuities, less Re-insurances			Interest, Dividends and Rents ... Rs.		
Surrenders (including Surrenders of Bonuses), less Re-insurances			Less—Income-tax thereon (*c*) ... ... Rs.		
Bonuses in Cash, less Re-insurances			Registration Fees ...		
Bonuses in Reduction of Premiums, less Re-insurances			Other Income (to be specified)		
Commission (less that on Re-insurances) ...					
Expenses of Management (*a*)—					
Agent' and Canvassors' allowance.					
Salaries, etc. (other than to					

FORM G—(*contd.*)

	Business within India.	Total.		Business within India.	Total.
	Rs.	Rs.		Rs.	Rs.
Agents and Canvassors)			Loss transferred to Profit and Loss Account ...		
Travelling expenses ...			Transferred from Appropriation Account ...		
Directors' fees ...					
Auditors' fees... ...					
Medical fees					
Law charges					
Advertising					
Printing and Stationery ...					
Other expenses of management (accounts to be specified)					
Other payments (accounts to be specified) ...					
Rents for offices belonging to and occupied by the company					
Rents of other offices occupied by the company					
United Kingdom, British Indian. Dominion and Foreign Taxes					
Bad Debts					
Other Expenditure (to be specified)					
Profit transferred to Profit and Loss Account ...					
Balance of Life Insurance Fund at end of the period as shown in the Balance-Sheet ...					
Rs. ...			Rs. ...		

Notes

(*a*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately.

(*b*) All single premiums for annuities, whether immediate or deferred, must be included under this heading.

(*c*) British Indian, United Kingdom, Foreign and Dominion Income-tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recovered from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for United Kingdom, British Indian, Foreign and Dominion taxes, other than those shown nnder this item.

(*d*) In the case of an insurer having his principal place of business outside British India, the expenses of management for the total business need not be split up into the several sub-heads, if they are not so split up in his own country.

FORM H

Summary and Valuation of the Policies of as at 19

Description of Transactions	Particulars of the Policies for Valuation					Valuation.			
	Number of policies.	Sums Assured.	Bonuses.	Office yearly Premiums.	Net yearly Premiums.	Sums Assured and Bonuses.	Office yearly Premiums.	Net yearly Premiums.	Net Liabilities.
DIVISION I									
Insurances.									
Group A—									
With immediate participation in profits									
For whole term of life ...									
Other classes (to be specified)									
Extra premiums									
Total Insurances ...									
Deduct—Re-insurances ...									
Net insuracces ...									
Group B— ...									
With deferred participation in... profits									
For whole term of life ...									
Other classes (to be specified)									
Extra premiums									
Total Insurances									
Deduct—Re-insurances ...									
Net insurances ...									
Group C—									
Under discounted bonus systems									
For whole term of life ...									
Other classes (to be specified)									
Extra premiums ...									
Total Insurances ...									
Deduct—Re-insurances ...									
Net insurances									
Total insurances with profits									

FORM H—*contd.*

Description of Transactions.	Particulars of the Policies for Valuation.					Valuation.			
	Number of policies.	Sums assured.	Bonuses.	Office yearly Premiums.	Net yearly Premiums.	Sums Assured and Bonuses	Office yearly Premiums.	Net yearly Premiums.	Net Liabilites:
Group D—									
Without participation in profits									
For whole term of life.									
Other classes (to be specified)									
Extra premiums									
Total insurances									
Deduct—Re-insurances ...									
Net insurances									
Total insurances without profits									
Total of the insurance shown in all groups									
Deduct—Re-insurances.									
Net amount of insurances									
Adjusiments, if any to be separately specified) ...									
DIVISION II									
Annuities on Lives.									
Immediate Annuities ...									
Deferred Annuities with return of premiums									
Deferred Annuities without return of premiums									
Other classes (to be specified)									
Total Annuities ...									
Deduct—Re-insurances.									
Net Annuities on Lives ...									
Total of the results after deduction of Re-insurances) ...									

Notes

1. Items in this Summary are to be stated to the nearest rupee.

2. No policy of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, is to be included in Groups A. B, C or D of this Form: any such policies must be shown in a separate Group which must be added to the Form.

3. If policies without participation in profits but with a guaranteed rate of bonus are issued, they must be separately specified in Group D of this Form.

4. Policies under which there is a waiver of premiums during disability must be shown as a separate class.

5. Separate forms must be prepared in respect of classes of policies valued by different tables of mortality or at different rates of interest or involving valuation of net premium on different bases.

6. In cases where separate valuations of any portion of the business are required under local laws in places outside British India and reserves based on such valuations are deposited in such places, a statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums, and the total net liabiliy on the bases as to mortality and interest adopted in each such place with a statement as to such bases respectively.

7. Office and net premiums and the values thereof must be shown after deduction of abatements made by the application of bonus.

FORM I

Valuation Balance-Sheet of as at 19

	Rs.		Rs.
Net liability under business as shown in the Summary and Valuation of Policies		Balance of Life Insurance Fund as shown in the Balance-Sheet	
Surplus, if any		Deficiency, if any	

Note—If the proportion of surplus allocated to the insurer, or in the case of an insurance company to shareholders, is not uniform in respect of all classes of insurances, the surplus must be shown separately for the classes to which the different proportions relate.

FORM J.

Specimen policy reserve values and minimum surrender values under a policy for Rs. 1,000.

Number of premiums paid.	Age at entry 20.		Age at entry 30.		Age at entry 40.		Age at entry 50.	
	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.
1.								
2.								
3.								
4.								
5.								
6.								
8.								
9.								
10.								
15.								
20.								

Note.—Items in this Form to be stated to the nearest rupee.

CHAPTER 41

REGULATIONS FOR PREPARING STATEMENTS OF BUSINESS IN FORCE AND REQUIREMENTS APPLICABLE TO SUCH STATEMENTS*

PART I

Regulations.

1. Statements prepared under this Schedule must be prepared, so far as practicable, in tabular form and must be identified by numbers and letters corresponding with those of the paragraphs of Part II of this Schedule.

2. Except with respect to rates of premium or contribution, items in statements prepared under this Schedule are to be shown to the nearest rupee.

3. Extra premium shown in the forms of Summary and Valuation prepared under the Fourth Schedule to this Act must not be included in statements prepared under this Schedule.

4. Every statement prepared under this Schedule shall be signed by the actuary making the investigation in connection with which it is prepared.

5. For the purposes of this Schedule the following expressions have been meanings hereby respectively assigned to them, namely:—

(*a*) "annual loading" means the provisions made for future expenses and profits;

* See Indian Insurance Act, 1930, Sec. 13. [Fifth Schedule.]

(*b*) "extra premiums" means a charge for any risk not provided for in the minimum contract premium;

(*c*) "net premiums" means the premiums taken credit for in the valuation in connection with which any statement is prepared; and

(*d*) "valuation date" means as respects any valuation the date as at which the valuation is made.

PART II

Requirements for Statements Applicable to Life Insurance Business.

The statements required to be prepared under this Part of this Schedule are as follows, namely:—

1. Statements, separately prepared in respect of policies with and without participation in profits, showing—

(*a*) as respects policies for the whole term of life, the rates of office premiums charged, in accordance with the published tables in use, for new policies giving the rates for decennial ages at entry from 20 to 70 inclusive; and

(*b*) as respects endowment insurance policies, the rates of office premiums charged, in accordance with the published tables in use, for new policies with original terms of ten, fifteen, twenty, thirty and forty years, giv-

ing the rates for decennial ages at entry from 20 to 40 inclusive, but excluding policies under which the age at maturity exceeds 60.

2. Statements, separately prepared in respect of policies with immediate profits, with deferred profits, with profits under discounted bonus systems, and without profits, showing in quinquennial groups—

(*a*) as respects policies for the whole term of

(*i*) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped according to ages attained;

(*ii*) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable througout life, and of the corresponding net premiums, grouped according to ages attained; and

(*iii*) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable for a limited number of years, and, either, the corresponding net premiums grouped in accordance with the grouping adopted for the purposes of the valuation, or, the annual loading reserved for the remaining duration of the policies, grouped according to ages attained;

(*b*) as respects endowment insurance policies—

(*i*) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped in accordance with the grouping adopted for the purposes of the valuation; and

(*ii*) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable, and of the corresponding net premiums, grouped in accordance with the grouping adopted for the purposes of the valuation:

Provided that—

(*a*) as respects endowment insurance policies which will reach maturity in less than five years, the information required by sub-paragraph (*b*) (*i*) of this paragraph must be given for each year instead of in quinquennial groups; and

(*b*) where the office premiums payable under policies for the whole term of life for a limited number of years, or the office premiums payable under endowment insurance policies, or the corresponding net premiums, are grouped for the purposes of the valuation otherwise than according to the number of years' payments remaining to be made, or, where the sums assured under

endowment insurance policies are grouped for the purposes of the valuation otherwise than according to the years in which the policies will mature for payment or in which they are assumed to mature if earlier than the true year, then, in any such case the valuation constants and an explanation of the method by which they are calculated must be given for each group, and in the case of the sums assured under endowment insurance policies a statement must also be given of the amount assured maturing for payment in each of the two years following the valuation date.

3. Statements as respects any policies in force under which premiums cease to be payable, whether permanently or temporarily, during disability arising from sickness or accident, showing the total amount of the office premiums payable.

4. Statements as respects immediate annuities on single lives for the whole term of life, separately prepared in respect of annuities on male and female lives, showing in quinquennial age groups the total amount of such annuities.

5. Statements as respects deferred annuities, separately prepared in respect of annuities on male and female lives, showing the specimen reserve values for annuities of one hundred rupees which will be produced on maturity on the basis of valuation adopted at ages, in the case of male lives, 60 and 65, and in the case of

female lives, 55 and 60; the said statements must show the specimen reserve values which will be produced under the table of annual premiums in use for new policies, and if under any other table of annual premiums in use for any other deferred annuity policies in force smaller reserve values will be produced, the like specimens of these must also be given.

6. Statements as respects any policies of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, showing the total claims paid since the date as at which the last statements were prepared under this Part of this Schedule or, where no such statements have been prepared, since the date on which the insurer began to carry on the class of business to which the statements relate, and the reserve for unexpired risks and outstanding claims.

*Rules as to the Valuation of the Liabilities of an Insurer in Insolvency or Liquidation**

The liabilities of an insurer in respect of current contracts effected in the course of life insurance business including annuity business, shall be calculated by the method and upon the basis to be determined by an actuary approved by the Court, and the actuary so approved shall, in determining as aforesaid, take into account—

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* See Indian Insurance Act, 1938, section 55. [Sixth Schedule.]

(*a*) the purpose for which such valuation is to be made,

(*b*) the rate of interest and the rates of mortality and sickness to be used in valuation, and

(*c*) any special directions which may be given by the Court.

The liabilities of an insurer in respect of current policies other than life policies shall be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.